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SUPREME COURT OF THE UNITED STATES.

No. ~~201~~. 121.

WILLIAM S. JOHNSTON, PLAINTIFF IN ERROR,

vs.

WILLIAM JONES AND SYLVESTER MARSH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

CCI. GIDEON, Printer, 511 Ninth Street, D.C.

1603

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UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } *ss.*

Pleas in the Circuit Court of the United States of America for the Northern District of Illinois, held at the city of Chicago, in said District, before the Hon. Thomas Drummond, District Judge of the said District, and in the absence pro tempore of the Hon. John McLean, one of the Justices of the Supreme Court of the United States, sole Judge of said Circuit Court, on Saturday, the ninth day of June, in the May adjourned Term, A. D. 1860, of said Court, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fourth year.

WM. H. BRADLEY, *Clerk.*

WILLIAM S. JOHNSTON
v.
WILLIAM JONES, and SYLVESTER MARSH.

Northern District of Illinois, *ss.*

Be it remembered, that on the seventh day of July, in the year of our Lord one thousand, eight hundred and forty-nine, in the July Term, A. D. 1849, of the Circuit Court of the United States for the District of Illinois, held at the city of Chicago, in the said District, came the said Wm. S. Johnston, plaintiff in this suit, by Messrs. Morris & Brown, his attorneys, and filed in open Court his declaration against the said Wm. Jones and Sylvester Marsh, defendants in this suit, together with a notice to the said defendants and affidavit of service thereof upon the defendants. Also at the same time filed his bond for costs in said entitled cause, which said bond for costs, declaration, notice and affidavit are in the words and figures following, to wit:

United States of America,
District of Illinois, at Chicago. }

William S. Johnston
v.
William Jones and Sylvester Marsh.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all the costs which may accrue in this action, either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this State.

Dated at Chicago, this 6th day of July, A. D. 1849.

B. S. MORRIS, [SEAL.]

[Endorsed.] Filed, July 7, 1849.

WM. POPE, *Clerk.*

United States Circuit Court for the District of Illinois. } Of the July Term, 1849, at Chicago.

United States of America, District of Illinois. }

William S. Johnston, a citizen of the State of Ohio, complains of William Jones and Sylvester Marsh, citizens of the State of Illinois, in a plea of Trespass in Ejectment.

For that the said plaintiff, William S. Johnston, heretofore, to wit, on the 2d day of August, in the year 1847, was possessed of water lot numbered thirty-four (34) of Kinzie's Addition to the town of Chicago, with the tenements, hereditaments and appurtenances thereto belonging, or in any wise appertaining, and is more particularly bounded as follows, to wit: Beginning at the northwest corner of said lot on Water street, thence north seventy-eight degrees and thirty minutes east on the south side of said Water street sixty feet to the northeast corner of said lot, thence south eleven degrees and thirty minutes east three hundred and eight feet to the water of Lake Michigan, as it was on the 22d day of February, A. D. 1833, when the survey and map of said addition was made, thence north seventy-eight degrees and thirty minutes east two thousand feet across the alluvion land made by the washing of the lake to the lake shore as it now is, thence a southerly course along the lake shore as it now is eight hundred feet to the north pier of the Chicago harbor, thence a southwesterly course along the said north pier two thousand and sixty feet to a point where the west line of said lot thirty-four and the east line of lot thirty-three of said addition crosses said north pier, thence north eleven degrees and thirty minutes west to the place of beginning, situate, lying and being in the City of Chicago, in Cook County, State of Illinois, within the District aforesaid, of the value of ten thousand dollars, to which said lot of land above described, the said plaintiff claims in fee simple; and being so possessed thereof, the said defendants afterwards, to wit, on the same day and year aforesaid, within the jurisdiction of this Court, unlawfully entered into the possession of the said premises, and from thence hitherto unlawfully withholds from the said plaintiff the possession.

And also for that the said plaintiff afterwards, to wit, on the 2d day of November, in the year 1848, was possessed of the following other described lot of ground, situate, lying and being in Kinzie's Addition to the town of Chicago, in the City of Chicago, in Cook County, State of Illinois, bounded on the west by water lot numbered thirty-three of said Kinzie's Addition, on the north by Water street of said addition, on the east by water lot numbered thirty-five, in part, and by Lake Michigan, in part, and on the south by the north pier at the mouth of the Chicago river, of the value of two thousand dollars, to which said lot of land last above described and bounded, the said plaintiff, a citizen of the State of Ohio, claims title in fee

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simple, and being so possessed thereof, the said defendants, citizens of the State of Illinois, afterwards, to wit, on the same day and year last aforesaid, entered into the possession of the said premises, and from thence hitherto unlawfully withholds from the said plaintiff the possession thereof.

And also for that the said plaintiff afterwards, to wit, on the 3d day of November, A. D. 1848, was possessed of a certain other tract of land, situate, lying and being in Kinzie's Addition to the town of Chicago, in the City of Chicago, in Cook County, State of Illinois, and within the jurisdiction of this Court, and bounded as follows, to wit: Beginning at a point on the east line of water lot No. 34 in said Kinzie's Addition three hundred and eight feet from its northeast corner on Water street of said addition thence running parallel with said Water street north seventy-eight degrees and thirty minutes east to the lake shore of Lake Michigan as it then was, thence a southerly course along the shore of said lake to the north pier at the present mouth of the Chicago river as made by the United States government, thence a westerly course along said north pier till it strikes the west line of said water lot 34, thence to the place of beginning, containing five acres of land more or less, of the value of two thousand dollars, to which land the plaintiff claims title in fee simple, and being so possessed thereof, the said defendants afterwards, to wit, on the same day and year last aforesaid, unlawfully entered into possession of said premises, and from thence hitherto unlawfully withholds from the said plaintiff the possession thereof. To the damage of the said plaintiff of five hundred dollars, and therefore he brings this suit, &c., by

MORRIS & BROWN, *his attorneys.*

Messrs. William Jones and Sylvester Marsh.

GENTLEMEN—You will take notice that a declaration in ejectment, of which the foregoing is a copy, will be filed on the first day of the next Term of the United States Circuit Court for the District of the State of Illinois, to be holden in the City of Chicago, on the first Monday of July next, with the Clerk of said Court, and upon the filing of the same a rule will be then and there made and entered by said Court, requiring you to appear and plead to the said declaration within twenty days after the entry of said rule, and that if you neglect to appear and plead to the said declaration, a judgment by default will be entered up against you, and the plaintiff will recover the possession of said premises in said declaration described.

Dated this 20th day of June, A. D. 1849.

WILLIAM S. JOHNSTON,
By MORRIS & BROWN, *his attorneys.*

James H. Rees makes oath and says that he did on the 26th day

of June, A. D. 1849, personally serve the above named William Jones and Sylvester Marsh each with a true copy of the foregoing declaration and notice, and at the same time acquainted them with the intent and meaning thereof.

JAMES H. REES.

Sworn to and subscribed before me, the
6th day of July, A. D. 1849.

GEO. H. MEEKER,
U. S. Commissioner.

[Endorsed.]
Filed, July 7, 1849.
WM. POPE, *Clerk.*

And afterwards, to wit, on the twenty-fifth day of July, in the year A. D. 1849, came the said defendants, by J. Young Scammon, Esq., their attorney, and filed in the office of the Clerk of said Court their plea in said entitled cause, which said plea is in words and figures following, to wit:

United States Circuit Court,
for District of Illinois.

William Jones and Sylvester Marsh
ads.
William S. Johnston.
} *Plea in Ejectment.*

And the said William Jones and Sylvester Marsh, defendants in this suit, by J. Young Scammon, their attorney, come and say that they are not guilty of unlawfully withholding the premises claimed by the said William S. Johnston, plaintiff, as alleged in the said declaration of the said William S. Johnston, plaintiff, and of this the said William Jones and Sylvester Marsh put themselves upon the country, and the said William S. Johnston doth the like, &c.

J. YOUNG SCAMMON,
Defendant's Attorney.

[Endorsed.]
Filed, July 25th, 1849.
WM. POPE, *Clerk.*

And afterwards, to wit., on Friday, the twenty-sixth day of July, in the July Term, A. D. 1850, of said Court, in the year, A. D. 1850, the following proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh.
} Ejectment.

This day came the parties by their attorneys, and issue being joined by agreement of parties, a jury is waived, and this cause

is submitted to be tried by the Court, and it is ordered by the Court that the trial be continued until 9 of the clock to-morrow morning.

And afterwards, to wit, on Saturday, the twenty-seventh day of July, in the July Term, A. D. 1850, of said Court in the year A. D. 1850, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and after making due progress in the trial of this cause, it is ordered, that the further trial be continued until 9 of the clock on Monday morning.

And afterwards, to wit, on Monday the twenty-ninth day of July, in the July Term of said Court in the year, A. D. 1850, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and it is ordered by the Court, that the cause be continued for argument, and for the purpose of adducing other testimony.

And afterwards, to wit, on Monday, the sixteenth day of December, in the December Term, A. D. 1850 of said Court, in the year, A. D. 1850, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

W. S. Johnston
vs
Jones and Marsh. } Ejectment.

By agreement of the parties, it is ordered that this cause be continued until the next term of this Court at Chicago.

And afterwards, to wit., on Friday, the eighteenth day of April, in the April Term of said Court in the year, A. D. 1851, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
Sylvester Marsh and William Jones. } Ejectment.

This day comes the plaintiff by Morris & Goodrich, his attor-

neys, and the defendants, by Collins & Scammon their attorneys also come, and by consent of the parties, it is ordered, that this cause be docketed of this term. And by consent of parties, it is further ordered, that this cause be heard, argued and finally determined at a Term of this Court to be held in Chicago.

And afterwards to wit, on Tuesday, the twenty-second day of April, in the April Term of said Court, in the year, A. D. 1851, the following further proceeding were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
Sylvester Marsh and William Jones. } Ejectment.

In this cause a jury having been heretofore waived, and after argument, before the Court ordered to be continued for re-argument, and for the purpose of adducing other testimony, and now this day comes the plaintiff by Morris & Goodrich, his attorneys, and the defendants by Collins, Scammon & Wilson, their attorneys, also come, and other testimony having been introduced and further argument being had, the cause was submitted to the Court, but the Court not being sufficiently advised in the premises, takes the matter under advisement.

And afterwards, to wit, on Wednesday, the twenty-fifth day of April, in the April Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and the Court being now sufficiently advised of, and concerning the questions arising in this cause finds the defendants not guilty.

Whereupon the plaintiff, by his attorney, enters his motion for a new trial herein.

And afterwards, to wit, on Saturday, the twenty-sixth day of April, in the April Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the said parties by their attorneys, and the plain-

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tiffs' motion for new trial herein for cause having been argued, it is considered that said motion be overruled.

It is thereupon considered, and adjudged by the Court, that the said defendants recover of, and from the said plaintiffs, their costs and charges in their defence herein expended, and that they have execution, &c.

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the said plaintiff by his attorneys, and moved the Court to grant him a new trial herein, under the statute in such case made and provided. And it appearing to the satisfaction of the Court, that all the costs recovered and taxed in this cause have been paid, it is ordered that the judgment herein be vacated, set aside, and for nothing held, and that a new trial be had herein.

And afterwards, to wit, on Saturday, the eleventh day of October, in the October Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and issue having been joined, thereupon come a jury, to wit: Thomas Lewis, W. W. Watson, Parmenus Bond, B. J. F. Hanna, Robert Norman, Charles Kinsey, Thornton People, S. S. Black, John Thompson, L. D. Plant, Jesser H. Johnson and William T. Hopkins, who were duly elected, tried and sworn, well and truly to try the issue joined, and after proceeding with the trial until the hour of adjournment, it is ordered that the further trial of the cause be continued until 9 of the clock on Monday morning next.

And afterwards, to wit, on Monday, the thirteenth day of October, in the October Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and also came the jury sworn herein, and after proceeding with the trial until the hour of adjournment. It is ordered that the further

trial of this cause be continued until 9 of the clock to-morrow morning.

And aftewards, to wit, on Tuesday, the fourteenth day of October, in the October Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh, } Ejectment.

This day, came again the parties by their attorneys, and also came the jury sworn herein, and after proceeding with the trial of this cause until the hour of adjournment. It is ordered that the further trial be continued until 9 of the clock to-morrow morning.

And afterwards, to wit, on Wednesday, the fifteenth day of October, in the October Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the said parties by their attorneys, and also came the jury sworn herein, and after proceeding with the trial of this cause until the hour of adjournment. It is ordered that the further trial be continued until 10 of the clock to-morrow morning.

And afterwards, to wit, on Thursday, the sixteenth day of October, in the October Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh, } Ejectment.

This day came again the said parties by their attorneys, and also came the jury, sworn herein, and after proceeding with the argument of this cause until the hour of adjournment. It is ordered, that the further trial of this cause be continued until 9 of the clock to-morrow morning.

And afterwards, to wit, on Friday, the seventeenth day of October, in the October Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and also came the jury sworn herein, after proceeding with the argument of this cause until the hour of adjournment, it is ordered, that the further argument be continued until 9 of the clock on Monday morning next.

And afterwards, to wit, on Monday, the twentith day of October, in the October Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh, } Ejectment.

The argument of this cause having been concluded, and the jury having retired under the charge of the Court, it was ordered by the agreement of the attorneys of the respective parties, that the jury be allowed to seal this verdict and hand it to the Clerk of the Court.

And afterwards, to wit, on Tuesday the twenty-first day of October, in the October Term of said Court, in the year, A. D. 1851, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and the jury being unable to agree upon a verdict, were by consent of the parties discharged, and this cause is ordered to be continued.

And afterwards, to wit, on Monday, the twenty-sixth day of April, in the April Term of said Court, in the year A. D. 1852, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties, by their Attorneys, and issue having been joined, thereupon come a jury of good and lawful men, to wit: R. J. McAndless, Joseph Monteith, Henry Wilcox, Benj. Talbot, William Brownside, James Watson, William Moore, Theodore Hubbard, Cyrus Alden, A. R. Robinson, Edward A.

Bedell, and Robert J. Cross, who were duly elected, tried and sworn, well and truly to try the issue joined herein, and after proceeding with the trial until the hour of adjournment, it is ordered, that the further trial of this cause be adjourned until nine of the clock to morrow morning.

And afterwards, to wit, on Tuesday, the twenty-seventh day of April, in the April Term of said court, in the year A. D. 1852, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the said parties by their attorneys, and the jury sworn herein also came, and after proceeding with the trial of this case until the hour of adjournment, it was ordered that the further trial be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Wednesday the twenty-eighth day of April, in the April term of said court, in the year A. D. 1852, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the said parties by their attorneys, and the jury sworn herein also came, and after proceeding with the trial of this cause until the hour of adjournment, it was ordered that the further trial thereof be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Thursday, the twenty-ninth day of April, in the April term of said court, in the year A. D. 1852, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the said parties by their attorneys, and the jury sworn herein also came, until the hour of adjournment, it was ordered, that the further trial thereof be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Friday, the thirtieth day of April,

in the April term of said court, in the year A. D. 1852, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again by their attorneys the parties herein, and the jury sworn herein also came, and after proceeding with the trial of this cause until the hour of adjournment, it was ordered that the further trial of this cause be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Saturday, the first day of May, in the April term of said court, in the year A. D. 1852, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury sworn herein also came, and having proceeded in the trial until the hour of adjournment, it is ordered that the further trial of this cause be continued until Monday morning next.

And afterwards, to wit, on Monday, the third day of May, in the April term of said court, in the year A. D. 1852, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury sworn herein also came, and having proceeded in the trial of the cause until the hour of adjournment, it is ordered that the further trial be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Tuesday, the fourth day of May, in the April term of said court, in the year A. D. 1852, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the

jury sworn herein also came, and the trial of the cause was proceeded in until the hour of adjournment, when it was ordered that the further trial thereof be continued until to-morrow morning at nine of the clock.

And afterwards, to wit, on Wednesday the 5th day of May, in the April Term of said Court, in the year A. D. 1852, the following further proceedings were had in said Court, in said entitled cause and entered of Record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury sworn herein also came, and the trial of this cause was proceeded in until the hour of adjournment, when it was ordered that the further trial thereof be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Thursday the 6th day of May, in the April Term of said Court, in the year A. D. 1852, the following further proceedings were had in said Court in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury sworn herein also came, and the trial of this cause having proceeded until the hour of adjournment, it is ordered that the further trial thereof be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Friday the 7th day of May, in the April Term of said Court, in the year A. D. 1852 the following further proceedings were had in said Court in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury sworn herein also came, and after having heard the evidence, arguments of counsel and instructions of the Court, retired to consider of their verdict.

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William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury sworn herein also came, and after having duly examined this cause, returned the following verdict, to wit: "We the jury find the defendants guilty of unlawfully withholding from the possession of the plaintiff a part of the premises described in the declaration, to wit, commencing at a point on the east line of lot 34 in Kinzie's Addition to the town of Chicago, three hundred and eight feet southwardly from North Water street, thence in an easterly direction in a straight line to a point on the lake shore one hundred and fifty-five feet from the North Pier, running on said shore for distance, thence westwardly along the line of the North Pier to a point on said pier, where the east line of lot 34, if produced touches said pier, thence along said line northwardly to the place of beginning, and we find the estate established on the trial in the plaintiff in said premises to be an estate in fee simple.

Whereupon the defendants entered their motion for a new trial herein.

And afterwards, to wit, on Friday the 4th day of June, in the April Term of said Court, in the year A. D. 1852, the following further proceedings were had in said Court in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and the motion for a new trial heretofore filed, having been submitted to the Court without argument and considered by the Court. It is ordered to be overruled.

And thereupon it is ordered and adjudged, that the plaintiff do have and recover the premises mentioned and described in the verdict of the jury, to wit, commencing at a point on the east line of lot thirty-four (34) in Kinzie's Addition to the town of Chicago three hundred and eight feet (308) southwardly from North Water street, thence in an easterly direction in a straight line to a point in the lake shore one hundred and fifty-five feet (155) from the North Pier, measuring on said shore for distance, thence westwardly along the line of the North Pier to a point in said pier where the east line of thirty-four (34) if produced, touches said pier, thence along said line northwards to the place of beginning, in the County of Cook, and State of Illinois, as of an estate in fee a simple, and that writ of possession issue for the

recovery thereof, and also that he recover of the said defendants, his costs and charges by him about this suit in this behalf expended, and that he have execution therefor.

Whereupon the said defendants entered into bond with Milton S. Patrick, as surety in the sum of three thousand dollars, the amount fixed by the Court, and which security is approved of and considered as sufficient.

And afterwards, to wit, on Thursday the 12th day of May, in the April Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court, in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

No writ of error having been sued out in this cause, and the costs having been paid by the defendants, the judgment entered in this cause at the last April Term of this Court, is ordered to be vacated and a new trial granted under the statute, and the cause continued.

And afterwards, to wit, on Monday the 24th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court, in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and issue being joined thereupon, came a jury of good and lawful men, to wit: Michael McGuire, Gideon Atkin, Henry Yeable, T. G. Prendergast, John S. Everett, Elijah Smith, Samuel Marrs, M. N. Kimble, William H. Adams, Norman Reaford, Edward Ray and Russell Means, who being duly elected, tried and sworn well and truly to try the issue joined, and after proceeding with the trial of this cause until the hour of adjournment, it is ordered that the further trial thereof be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Tuesday the 25th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court, in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the

jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until 9 o'clock to-morrow morning.

And afterwards, to wit, on Wednesday the 26th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court, in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until 9 o'clock to-morrow morning.

And afterwards, to wit, on Thursday the 27th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day again came the parties by their attorneys, and the jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until to-morrow at nine o'clock.

And afterwards, to wit, on Friday the 28th day of October, in in the year A. D. 1853, in the October Term of said Court, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury empanneled herein also came, and after proceeding with the trial of this cause until the hour of adjournment, the further trial thereof was postponed until nine of the clock to-morrow morning.

And afterwards, to wit, on Saturday the 29th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

recovery thereof, and also that he recover of the said defendants, his costs and charges by him about this suit in this behalf expended, and that he have execution therefor.

Whereupon the said defendants entered into bond with Milton S. Patrick, as surety in the sum of three thousand dollars, the amount fixed by the Court, and which security is approved of and considered as sufficient.

And afterwards, to wit, on Thursday the 12th day of May, in the April Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court, in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

No writ of error having been sued out in this cause, and the costs having been paid by the defendants, the judgment entered in this cause at the last April Term of this Court, is ordered to be vacated and a new trial granted under the statute, and the cause continued.

And afterwards, to wit, on Monday the 24th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court, in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and issue being joined thereupon, came a jury of good and lawful men, to wit: Michael McGuire, Gideon Atkin, Henry Yeable, T. G. Prendergast, John S. Everett, Elijah Smith, Samuel Marrs, M. N. Kimble, William H. Adams, Norman Reaford, Edward Ray and Russell Means, who being duly elected, tried and sworn well and truly to try the issue joined, and after proceeding with the trial of this cause until the hour of adjournment, it is ordered that the further trial thereof be continued until nine of the clock to-morrow morning.

And afterwards, to wit, on Tuesday the 25th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court, in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the

jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until 9 o'clock to-morrow morning.

And afterwards, to wit, on Wednesday the 26th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court, in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until 9 o'clock to-morrow morning.

And afterwards, to wit, on Thursday the 27th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day again came the parties by their attorneys, and the jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until to-morrow at nine o'clock.

And afterwards, to wit, on Friday the 28th day of October, in in the year A. D. 1853, in the October Term of said Court, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury empanneled herein also came, and after proceeding with the trial of this cause until the hour of adjournment, the further trial thereof was postponed until nine of the clock to-morrow morning.

And afterwards, to wit, on Saturday the 29th day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury sworn herein also came, and proceeded with the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until nine of the clock on Monday morning next.

And afterwards, to wit, on Monday the 31st day of October, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury sworn herein also came. and proceeded in the trial of the cause until the hour of adjournment, when the further trial thereof was postponed until nine o'clock to-morrow morning.

And afterwards, to wit, on Tuesday the 1st day of November, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day again came the parties by their attorneys, and the jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until nine o'clock to-morrow morning.

And afterwards, to wit, on Wednesday the 2d day of November, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the further trial thereof was postponed until nine o'clock to-morrow morning.

And afterwards, to wit, on Thursday the 3d day of November,

in the October Term of said Court in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury empanneled herein also came, and proceeded in the trial of this cause until the hour of adjournment, when the trial thereof was postponed until nine o'clock to-morrow morning.

And afterwards, to wit. on Friday the 4th day of November, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day again came the parties by their attorneys, and the jury empanneled herein also came, and the argument of this cause was continued until the hour of adjournment, when the further trial thereof was postponed until nine o'clock to-morrow morning.

And afterwards, to wit, on Saturday the 5th day of November, in the October Term of said Court, in the year A. D. 1853, the following further proceeding were had in said Court in said cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came again the parties by their attorneys, and the jury empanneled herein also came, and the argument herein was continued until the hour of adjournment, when the further argument thereof was postponed until nine o'clock on Monday morning next.

And afterwards, to wit, on Monday the 7th day of November, in the October Term of said Court, in the year A. D. 1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and the jury

empannelled herein also came, and the argument of the counsel being concluded and the jury having heard the charge of the Court, retired to consider of their verdict, and returned into court with the following verdict: "The jury find the defendants guilty of unlawfully withholding a part of the premises described in the declaration *described* as follows, beginning at a point on the line between lots 34 and 35 three hundred feet southerly of the south line of North Water street, measuring on that line for distance, thence south eleven degrees thirty minutes east one hundred and thirty-five feet to the north pier of the Chicago river, thence easterly along the north pier to the shore of Lake Michigan, thence northwardly along the lake shore two hundred and twenty-two feet, thence westerly in a straight line to the place of beginning, and we find the estate established in the plaintiff on the trial to be an estate in fee simple, and assess his damages at one cent.;" whereupon the defendants filed their motion for a new trial.

And on the eighth day of November, in the year last aforesaid, came the said defendants, by James H. Collins, Esq., their attorney, and filed in the office of the clerk of said Court their motion and reasons for a new trial in said entitled cause, which are in the words and figures following, to wit:

Circuit Court of the United States,
For the District of Illinois.

William Jones and Sylvester Marsh
ads.
William S. Johnston.

The defendants come and move the Court to set aside the verdict, and for a new trial in this case, on the following grounds:

First. That the verdict is against the evidence.

Second. That the verdict is against law.

Third That the Court erred in the admission of evidence on the trial.

Fourth. That the Court erred in giving the instructions asked for by the said plaintiff.

Fifth. That the Court erred in refusing to give the instructions asked for by the said defendants, and also in modifying in giving instructions asked for by the defendants as modified.

JAS. H. COLLINS,
Def'ts' Atty.

(Endorsed,)
Filed Nov. 8, 1853.
WM. POPE, *Clerk.*

And afterwards, to wit, on Wednesday, the ninth day of November, in the October Term of said Court, in the year A. D.

1853, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and the Court overruled the motion for a new trial hereinbefore filed. It is thereupon ordered and adjudged that the plaintiff do have and recover of the defendants the premises described in the verdict of the jury, part of the premises described in the declaration, to wit, beginning at a point on the line between Lots thirty-four and thirty-five in Kinzie's addition to Chicago, Cook county, Illinois, three hundred feet southerly of the south line of North Water street, measuring on that line for distance; thence south eleven degrees and thirty minutes east one hundred and thirty-five feet to the north pier; thence easterly along the north pier to the shore of Lake Michigan; thence northwardly along the lake shore two hundred and twenty-two feet; thence westerly in a straight line to the place of beginning; and that a writ of possession issue for the recovery thereof, and that the plaintiff do have and recover of the defendants his costs and charges by him about his suit in this behalf expended, and that he have execution therefor.

And afterwards, to wit, on Thursday, the tenth day of November, in the year A. D. 1853, in the October Term of said Court, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

By agreement of counsel, it is ordered that the bill of exceptions in this case may be signed in vacation, and filed as of the ninth day of November of this term.

And afterwards, to wit, on Tuesday, the seventh day of November, in the year A. D. 1854, in the October Term of said Court, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the plaintiff by his attorney, and enters his motion to amend an order heretofore entered of record on the

10th day of November, A. D. 1853, relative to a bill of exceptions made in this cause.

And afterwards, to wit, on Wednesday, the fifteenth day of November, in the year A. D. 1854, in the October Term of said Court, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

This day came the parties by their attorneys, and the Court overrules the motion, heretofore filed by plaintiff's attorneys, to amend an order heretofore entered of record on the 10th day of November, A. D. 1853, relative to a bill of exceptions made in this cause. Whereupon the plaintiff, by his attorneys, excepts to the ruling of the Court.

And afterwards, to wit, on Tuesday, the seventh day of October, in the year A. D. 1856, in the October adjourned Term, A. D. 1856, of the Circuit Court of the United States for the Northern District of Illinois, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

The plaintiff, by B. S. Morris, Esq., his attorney, comes and files the mandate of the Supreme Court, and moves the Court thereon that the cause be docketed, which is granted by the Court, and on his motion the same is continued to the next term.

And afterwards, to wit, on Thursday, the ninth day of July, in the July Term of said Court, in the year A. D. 1857, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

By agreement of the parties, by their attorneys, it is ordered that this cause be continued at the costs of the plaintiff.

And afterwards, to wit, on Friday, the twenty-third day of March, in the year A. D. 1860, in the March adjourned Term of said Court, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston *vs.* William Jones and Sylvester Marsh.	Ejectment.

Now comes the plaintiff, by John A. Wills, Esq., his attorney, and now come also the defendants, by Messrs. Scammon, McCagg and Fuller, and A. Lincoln, Esq., their attorneys, and upon issue joined thereupon, come a jury of good and lawful men, to wit: Richard Mascall, Matthew Griswold, Joseph Gay, A. J. Cronise, Preston Martin, William H. Blish, Samuel Thomas, Jr., William V. Plum, Isaac Delano, John Strean, Samuel Waugh, and A. L. Porter, who were duly elected, tried and sworn well and truly to try said issue, and after proceeding with the testimony until the hour of adjournment, without concluding the same, the further hearing of testimony is postponed until to morrow morning.

And afterwards, to wit, on Saturday, the twenty-fourth day of March, in the March adjourned Term of said Court, in the year 1860, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston *vs.* William Jones and Sylvester Marsh.	Ejectment.

Now come again the parties by their respective attorneys, and now come also the jury heretofore empanneled in this cause, and after proceeding with the testimony until the hour of adjournment, without concluding the same, the further hearing is postponed until Monday morning next.

And afterwards, to wit, on Monday, the twenty-sixth day of March, in the March adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston *vs.* William Jones and Sylvester Marsh.	Ejectment.

Now come again the parties, by their attorneys, and now come also the jury heretofore empanneled in this cause, and after proceeding with the testimony until the hour of adjournment, without concluding the same, the further hearing is postponed until to-morrow morning, at half past nine o'clock.

And afterwards, to wit, on Tuesday, the twenty-seventh day of March, in the March adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury heretofore empanneled in this cause, and after proceeding with the testimony until the hour of adjournment without concluding the same, the further hearing is postponed until to-morrow morning.

And afterwards, to wit, on Wednesday, the twenty-eighth day of March, in the March adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury who were heretofore empanneled in this cause, and after proceeding with the evidence until the hour of adjournment, without concluding the same, the further hearing is postponed until to-morrow morning.

And afterwards, to wit, on Thursday, the twenty-ninth day of March, in the March adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury heretofore empanneled in this cause, and after proceeding with the evidence until the hour of adjournment, without concluding the same, the further hearing is postponed until to-morrow morning.

And afterwards, to wit, on Friday, the thirtieth day of March, in the March adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court, in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury heretofore empanneled in this cause, and after proceeding with the evidence until the hour of adjournment, without concluding the same, the further hearing is postponed until to-morrow morning.

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And afterwards, to wit: on Saturday, the thirty-first day of March, in the March adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

Willam S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury, heretofore empaneled in this cause, and after proceeding with the testimony until the hour of adjournment without concluding the same, the further hearing is postponed until Monday morning.

And afterwards, to wit: on Monday, the second day of April, in the March adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury, heretofore empanneled in this cause, and after concluding the testimony, and hearing a part of the arguments of counsel, the hour of adjournment having arrived, the further hearing of the arguments is postponed until to-morrow morning.

And afterwards, to wit: on Tuesday, the third day of April, in the March adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

Now come the parties, by their respective attorneys, and now come also the jury, heretofore empanneled in this cause, and after proceeding with the arguments of counsel until the hour of adjournment, the further hearing is postponed until to-morrow morning.

And afterwards, to wit: on Wednesday, the fourth day of April, in the March adjourned Term of the said Court, in the year A. D. 1860, the following further proceedings were had in said Court in said entitled cause, and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

Now come again the parties, by their attorneys, and now come

also the jury, heretofore empanneled in this cause, and after hearing the concluding arguments of counsel and receiving instructions from the Court, the jury retired to consider of their verdict, and after an absence of a few hours, they returned into Court the following verdict: "We, the jury, find the defendants are not guilty of unlawfully withholding the premises claimed by the plaintiff in the declaration." Whereupon the plaintiff, by his attorney, moves the Court for a new trial herein.

On the trial of the above-entitled cause, the following exceptions were made and allowed, to wit:

In the Circuit Court of the United States for the Northern District of Illinois.

William S. Johnston *vs.* William Jones and Sylvester Marsh.	Ejectment. Plaintiff's Bill of Exceptions.

Be it remembered, that afterwards, to wit: on the twenty-third day of March, A. D. 1860, at a Circuit Court of the United States for the Northern District of Illinois, held in the United States Court room, in the city of Chicago, in said District, before the Honorable Thomas Drummond, one of the Circuit Judges, appointed to hold the said Circuit Court according to the form of the statute in such case made and provided, the aforesaid issue in ejectment, so joined between the said parties as aforesaid, came on to be tried by a jury of the district aforesaid for that purpose, duly empanneled, good and lawful men of the said district. At which time came there as well the said plaintiff as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid empanneled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the said issue.

And upon the trial of the said issue, the counsel for the plaintiff and the defendants, to maintain and prove the issue on their parts respectively, offered the following documentary and oral evidence.

The evidence, as contained in a printed report, hereto attached, by the Court, as explanatory of this Bill of Exceptions, it being understood that the said report is to be referred to for the purpose of comprehending the circumstances under which the rulings, hereinafter referred to, were made by this Court; and it is understood and agreed by the counsel, with the consent of the Court, that whenever any document is referred to in the said report, which is not contained therein, it is to be annexed to said report, at the request of the counsel of either party, by the Clerk of this Court as a part of the said report, and the said report and documents are to be considered a part of this Bill of Exceptions for the purpose aforesaid as though they were incorporated herein.

But inasmuch as the said printed report of the evidence is incorrect in certain particulars, for the correction of the same, the following additions and alterations are to be made therein, and are hereby made part and parcel of this Bill of Exceptions, viz.:

On page 27 of the Printed Report, following the name John H. Kinzie, should be added the date of the order, viz., "July 19th, '50," and immediately thereafter William Jones' receipt, as follows:

"Received of B. S. Morris the Map aforesaid.
"July 19, '50.

"WILLIAM JONES."

According to a correct copy of the said paper hereto attached, viz.:

Mr. Jones wishes to have the original Map of "Kinzie's Addition;" will you please let him have it?

And oblige yours,

J. H. KINZIE.

July 19th, '50.
B. S. MORRIS, Esq.

Rec'd of B. S. Morris the Map aforesaid.
July 19 '50.

WILLIAM JONES.

On page 233 of the Printed Report should be added at the close, as a part of the evidence of Alex. McGreggor, the following, omitted in the said Printed Report, viz.:

"Defendants offered in evidence without objection a note for $125, signed Alex. McGreggor, dated July 8, 1833.

(Note.)

"On or before the first day of November next I promise to pay John H. Kinzie or order, the sum of one hundred and twenty-five dollars, (being for water lot number thirty-five, and all my right and title east thereof in Kinzie's Addition to Chicago.)

ALEX. McGREGGOR.

Chicago, July 8, 1833.
Witness—ASHER B. SAXTON."

On page 153 of the Printed Report, the word "two" in the testimony of Wm. Gamble should be corrected so as to read "for ten" years I was connected with the harbor works, &c.

On page 3 of the Printed Report the following, viz., "Also, the report of Lieut. Allen, Sept. 30, 1834."

On page 197 of the Printed Report, "Maps before attended to," should be corrected so as to read, "Maps before alluded to by the witnesses in their testimony."

On page 360, the word testify in the phrase, "so far as that *testify* showed interest, &c.," should be "*testimony*."

On page 450 of the Printed Report, the ground of the offer should be stated more fully, by adding thereto the following, viz :

"The said deed was offered on the ground that it was not necessary for the plaintiff to go into a Court of Chancery to obtain a reformation of the deed to Johnston, dated Oct. 22d, 1835, supposing that accretions east of the east line of Lot No. 34 extended southward to the pier, had been formed previously to that date, *provided*, that the same result had been accomplished amicably and without suit, that if the plaintiff had gone into Chancery, and had obtained a reformation of his deed, the deed as thus reformed would have been admissible as evidence in this ejectment, notwithstanding the fact that it had been made since the institution of this suit: that as the plaintiff had obtained a reformation of his deed *without suit*, from the party holding the legal title, the deed, according to the views of the Supreme Court was just as admissible as if it had been obtained after a long adverse litigation in a Court of Chancery.

On page 462 of the Printed Record should be added immediately after the last bracket mark] the following, viz.:

"In dividing the accretion in this case, you will ascertain the extent of the water-line of Lot 34 between the North Pier and the point where the line dividing Lots 34 and 35 touched the water. You will also ascertain the extent of the new front on the Lake shore as it at present exists, beginning as far northward as the whole accretion extends, viz., at the south side of the water works basin, as shown by the survey made by Greeley, and shown on the Greeley Map, No. 3, if you are satisfied it is correct, including in this new shore line also the pier shore along the line of the piers, from the waters of the Lake westward to the old shore line. You will then divide this new shore line, thus ascertained, into as many equal parts as there were feet on the old shore line, extending from the North Pier to the south side of the water works basin, and thus give to the plaintiff as many of these parts as he had feet on the old shore, and then draw a straight line from the point of division on the old Lake shore to the point thus determined as the point of division on the present shore line.

If you believe from the evidence that this old shore line was as claimed by the plaintiff, then, according to the principles of the Supreme Court laid down for this trial, the plaintiff will be entitled to the share of the accretion marked on the Greeley Map, No. 3, if you believe it is accurate, as the shore of water Lot No. 34, and no more. If, on the contrary, the water front of Lot was less than that claimed by the plaintiff, of course, on the same principles, his share of the accretion will be proportionately less."

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PLAINTIFFS' EVIDENCE.

First Day—Friday March, 23, 1860.

The case of William S. Johnson *vs.* William Jones and Sylvester Marsh, ejectment, for a certain portion of the accretion on the shore of Lake Michigan, immediately north of Chicago river, was taken up.

Hon. Buckner S. Morris, Hon. Isaac N. Arnold and John A. Wills, Esq., appeared on behalf of the plaintiffs.

Hon. Abraham Lincoln, Hon. Samuel W. Fuller, Hon. Van. H. Higgins and John Van Arman, Esq. appeared for the defendants.

The following jury were, after due examination, empanneled to try the cause

Samuel Waugh, John Strean, Isaac Delano, Wm. V. Plum, Samuel Thomas' Jr., Wm. H. Bush, L. Porter, Preson Martin, Joseph Gray, Richard Mascall, Matthew Griswold, A. J. Crouise.

Mr. Wills opened the case briefly on the part of the plaintiffs.

Mr. Fuller replied, opening the case on behalf of the defendants.

Mr. Wills proceeded to offer the documentary evidence of the plaintiff as follows:

Documents proving application and pre-emption, May 7, 1831, by Robert A. Kinzie, of North fraction of Sec. 10, T. 39, N. R. 14 E., 3 P. M.

Certificate of the Receiver and Register of the land office at Palestine, Illinois, of the purchase of said land by Robert A. Kinzie, dated May 7, 1831; also, an additional certificate of the Receiver.

Patent from the United States to Robert A. Kinzie.

Certified copy of a deed from Robert A. Kinzie to John H. Kinzie, dated February 25, 1833. of certain lots, containing among others, lot 34, in Kinzie's Addition.

Certified copy of a deed from John H. Kinzie and wife to Robert Kinzie, dated June 9, 1835, for water lot 34, in Kinzie's Addition, "agreeable to the town plat recorded in the office of the Recorder."

Bond for a deed from Robert A. Kinzie to Gurdon S. Hubbard for water lot 34, in Kinzie's Additton, dated June 10, 1835.

Mr. Fuller objected to the last document as irrelevant and incompetent; and argued the question.

Mr. Wills, Mr. Lincoln, Mr. Van Arman and Judge Higgins followed; the plaintiff's counsel stating that they would connect this bond with other evidence so as to make it competent, if it were not admissible at the present stage of the case; the defend-

ant's counsel contending that from its nature it was incompetent that it could not be so connected, and should not be admitted, even temporarily.

THE COURT.—I do not see that it is very material. It may become so, as the plaintiff's counsel state that they will connect it with the title of the plaintiff, and if they, the Court, will instruct the jury in relation to it. I therefore overrule the objection to its admission now; and I will hereafter rule it out if it is not connected with other proof.

Mr. Lincoln objected to its admission at all, and desired the benefit of an exception to the ruling.

Mr. Wills next offered a deed from Robert A. Kinzie and wife to Wm. S. Johnson, plaintiff in this suit, dated October 22, 1835, for water lots 33 and 34, and lot 7 in Kinzie's Addition.

Quit claim deed from John H. Kinzie to Wm. S. Johnston, dated July 1, 1857, for water lot 34 in Kinzie's Addition, and any accretions that may have been formed at that date.

Mr. Fuller objected to this document as made since the commencement of the suit July 7, 1849. After some discussion,

THE COURT.—I shall sustain the objection as at present made, and give the plaintiffs the privilege of hereafter showing it to be material, if they can.

Mr. Wills desired the Court to note the plaintiff's exception.

It being now one o' clock the Court took a recess of half an hour, when

Mr. Wills offered in evidence an official letter from Lieutenant James Allen, to Brigadier General Gratiot, Chief Engineer, Washington, dated February 26, 1834.

Also the Report of Lient. Allen, Sept. 30, 1835.

Also the Report of Lieut. Allen, Sept. 30, 1836.

Also the Report of Lieut. Allen, Sept. 30, 1837.

Also the Report of Lieut. Allen, Sept. 30, 1838.

Also the Report of Major Turnbull, June 5, 1844, giving a history of Chicago Harbor, &c.

Mr. Fuller objected to all these documents of date subsequent to the time this plaintiff's title accrued, viz., the Report of 1846, '7 and '8, and the Report of Major Turnbull in 1844.

THE COURT.—I think what took place afterwards may be material, as showing the condition of the work. There may be some things improper in them, and if you will make the objection when they are read, the Court will consider them. So far as they throw light on this work however, they are competent.

Defendant's counsel excepted.

GEORGE W. SNOW called by the plaintiff, being duly sworn, was examined in chief by Judge Morris and testified as follows:

Q. When did you come to Chicago? A. In July, 1832.

Q. How long have you remained in Chicago? A. Until the present time since 1832.

Q. Where you at any time City Surveyor, or deputy? A. I was the Deputy of Jediah Wooley in 1833.

Mr. Wills. At the time this was made? (Pointing to the "Original Map.") A. No, sir, not at that time. I became a deputy at the time he certified to that map—at the same time they sent for him to come up here.

Q. You were then made a deputy? A. Yes, sir.

Q. Did he examine your work? A. Yes, sir, and certified to it.

Q. [Presenting the "Original Map."] Look at that paper and state how and when it was made? A. I made that map. The dates are here. It was February 23, 1833.

Q. Did you make it from your minutes of what you had actually surveyed? A. Yes, sir, the principal part of it is actual survey. The meanders of the Lake are not all so.

Q. What portion was actually surveyed and what portion was not.

MR. FULLER wished to know if the plaintiff intended to offer that map in evidence.

Judge Morris.—I shall.

Q. State how you made the survey—where you commenced? A. I commenced at work at the line between [sections] 9 and 10.

Mr. Fuller stated that he intended to object to the map when offered, and now he objected to the witness talking from the map.

Q. If you made a survey of Kinzie's Addition, detail the facts, &c. A. Well, I shall have to see the map to do so, if I continue that.

COURT—You can look at the map and refresh your recollection. A. I can't explain to them or anybody, without. I would say I made the map from actual survey.

Mr. Arnold.—You were employed by the proprietor, Mr. Kinzie, to lay out that addition? A. Yes.

Q. Go on, and tell where you began, &c. A. I commenced this at the United States mound where this joins the river, this is the meander of the river—where this line between (sections) 9 and 10 does. Here is the meander line, and from that I commenced surveying this way.

[The witness here took the "Original Map" and passing from the witness stand over into the midst of the Jury proceeded with his explanation, illustrating his testimony during the greater part of the remainder of his examination, by pointing out the lines and points intended, on the map to the jurors, Many of his expressions were of necessity unintelligible to the Reporter]. I run this way to this point, and then back here parallel, to the other, or nearly so, and then from there again we run here, run-

ning this line first. This line was governed by a supposed harbor, running out nearly parallel to it.

Q. Will you explain that a little more clearly? A. I commenced where the line between 9 and 10 struck the meandered line of the river. Then we run off these water lots, sixty feet, until we came to where it was necessary to make an angle; and that street was left I forget how much in width. To assist us in making this continuation of North Water street this angle was made and that line was made to correspond with the supposed harbor. That is the east end of North Water Street.

Q. Why did the line take that shape? A. It was supposed to be a harbor there and it run out parallel. A harbor was to be there. An appropriation was made.

Mr. Van Arman.—You say the north portion of the survey was made first? A. The lots north of Water street.

Mr. Arnold.—No south,—the water lots.

Q You run north of the water lots, but the remaining portion here was run around a subdivided lot? A. Yes.

Q. How in relation to these lines on the lake shore? A. Three lines on the lake were measured. They are accurate running to the lake. Here is one (indicating) and there is one on Indiana Street. The one on the north side of Indiana Street was was run and measured, and this line also.

Judge Higgins.—North Water Street was measured out and what other line besides that? A. The north line of the fractional section—between that and section 3. The intermediate one is imaginary.

Q. Describe how you got that line which you just pointed out? A. Well, sir, for instance, here is Water Street—I set down my compass and take the bearings both north and south of the point I stood at.

Q. Was it in the edge of the water? A. Yes, sir, right at the edge of the water—at the end of Water Street. There was some twenty-four feet there—a fraction that was not taken. Then I do the same thing on the north side of Indiana street, and on this other line north. That was the basis by which I got the lake shore.

Q. You sighted north and south from each of these points? A. Yes.

THE COURT.—These three points were established? A. Yes, sir.

Q. What three points? A. The north line of the section, the north line of Indiana street where it intersected the water, and the termination of the line at the end of North Water street on the south side of the street.

Q. Which side of Indiana street? A. North side.

Q. You took the bearings of the shore from each of these points? A. Yes, sir.

Mr. Lincoln.—You sighted both ways up and down the lake? —if you call it up and down? A. Yes.

Q How did you lay down these lines after taking these courses? A. By the observation from that point—from the point on the street. This (the lake) you see, was twenty-four feet east of the northeast corner of lot 35. That little fraction was not included then. That was left.

Q. How does this line [the lot boundary] run off from this line [the street?] A. At right angles.

Q. How were the water lots laid off? A. We run sixty feet on the south line of North Water street, [pointing to the west end of North Water street.] I see here at the end of Kinzie and Water street is a point; and there is another line to the south of it. We run sixty feet off to a lot, on the street, and continued that until we got to that point. That includes No 14.

Q. You got to the northeast corner of 14? A. Yes. Then there is a space there. I don't know what that is. Then we commenced again, and run again east towards the lake. They [the first and second direction of N. Water street] are both east, but one more than the other. The first is N. 47° 30′ E. and the other N. 78° 20′.

Q. How were the lots laid off there? A. It's the same process —sixty feet for a lot. The lines run at right angles. [Lot] 15 was the place of difference between these two lines. The whole of the angle was thrown upon the east side of this [east line of lot 14]. On the west side of this street, the lots are at right angles. It's all in the same manner. Where we finished I measured twenty-four feet, and that was to the water's edge at that time.

Q. In laying down this water-line on the map, did you make this water-line by your field notes? A. Yes.

Q. You had taken this course of the lake, and you let these lines fall at right angles [to the street] until they struck that course? A. Yes, sir—the water lots, that is the process.

Q. In taking your bearing, did you notice whether you were close to the water? Was the shore straight? A. No, not straight. I intended to make this an average of the general shape. It was the average shore I intended, the general direction of the shore.

Q. Then you let fall these lines until they struck that point—the water-line thus made? A. Yes. I let the lines fall from the south side of Water street until they struck the water—that's what I mean.

Q. Why did you not make another lot east of 35? A. We came to the water in 24 feet

Q. State whether the east line of 34 struck the water before the west line did? A. Oh, yes, sir.

Mr. Fuller objected to the use of the map in this manner, placing the map before the jury indirectly.

Mr. Wills, Judge Higgins, Mr. Lincoln, and Mr. Arnold followed, arguing the question.

THE COURT.—I will allow any testimony that tends to show where the boundary was in 1835. I may be obliged by the decision of the Supreme Court to exclude that plat, though I do not myself see that it is at all material one way or the other. I will allow the jury to hear all that Mr. Snow knows about it.

Mr. Arnold proceeded with the examination.

Q. You took this bearing from east of 35, I understand? A. Yes, sir, 24 feet east of it. I sighted down the lake shore and up, and noted the angle in my field notes.

Q. Can you tell what that angle was? No, sir, I cannot.

Q. Can you tell where it would strike the east line of 35? A. No, sir.

Q. Did you take it at the time? A. No, sir, not at that particular point. These were imaginary lines. We run them at right angle to north Water street.

Q. What sort of a day was it? It was a very pleasant day, the wind was from the west. It was as pleasant a day as to-day, the water was lower than usual.

Q. What would be the effect of a west wind? A. The water would go out on the shore, and it would be low.

Q. Was there any wind sufficient to make a motion of the water? A. No, sir, scarce any. The water was quiet.

Q. At that time would the east line of 34 strike Lake Michigan before it struck the pier? A. I don't know what the distance to the pier was. I have seen it, but don't know. I know this that the pier went more south than was anticipated. It went further south, and increased the length of these lots—of these lines.

Q. Then you say that this line of North Water street was made angling in the way it is, in anticipation that the Harbor would be run out in the same direction? A. Yes, sir.

Q. And you say the Harbor being run out at a greater angle south, lengthened them? A. Yes, sir—at the east end.

Q. Does that map according to your recollection, and judgement represent the shore correctly?

Objected to as the map was not in evidence, and also as it was testified by the witness, to have been made in part by guess.

Witness.—There are some facts then each side of these points; it is correct.

Objection renewed and argued by counsel on both sides. Objection overruled, inasmuch as the map was a memorandum and diagram made by the witness at the time; the plat not being admitted itself, but to be used to refresh the mind of the witness.

Q. Where was the lake shore in reference to the east line of 34

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when you made that survey? Where would the lake shore strike the east line of 34? How far from North Water street? [Witness pauses.]

Q. About how far?

Mr. Wills.—That map has a scale can you estimate it from that? A. I can get it very nearly.

Objected to, objection sustained.

Q. State how far from North Water Street the line dividing 34 and 35 struck Lake Michigan? A. Well, I can measure it.

Q. But if you recollect? A. No, sir, I can't recollect.

Q. But you can recollect substantially?

Judge Higgins objected to the mode of re-examination.

Witness.—If you will let me measure that I can tell you.

Q. State according to your best recollection? A. I have nothing to refresh my memory except looking at that. By that I could compare it with other distances. I think that is right. Objected to.

Mr. Fuller.—Didn't you guess at the length of that line at the time? A. Not exactly.

Mr. Arnold.—State about how far it was? A. Well I can measure it.

Q. Give us your best judgement. Refresh your memory by that map. A. It's about 240 feet. The line is about that. I take it from that, (pointing to the map).

Judge Higgins.—You have no recollection though? A. No, sir.

THE COURT—Look at the map, or diagram as something you made yourself at the time, and then state as near as you can recollect? A. I tell you in so many words, I should have to count these lots, and make that a similar distance.

Q. You remember of making that map? A. Yes, I remember the time I made the survey.

Q. You remember taking sight from that particular point? A. Yes.

Q. You remember of seeing the water of Lake Michigan there? A. Yes, sir, distinctly.

Q. You remember making the map from the data you got? A. Yes, sir.

Q. Did you have any conversation with gentlemen as to the size of the lots? A. They gave me the size of the lots. They had nothing to say about the observation I took. The size of these lots was to be 60 feet on North Water street.

Q. Do you remember the direction of the line of the lake in reference to the lines of the lots, as to whether it run in a way to cut them diagonally? A. It cut them.

Q. Do you remember that it was angling, and cut that lot at an angle? A. Yes.

Q. Do you remember looking down there, and sighting along

as to where the shore run along there? A. Yes, that's the way I got the lake shore.

Q. You know substantially where the pier is? A. No, I could not say that.

Q. Do you know how many hundred feet the pier is from North Water street? A. That depends on where it is.

Q. Can you tell how far it is where it cuts 35? A. No, sir.

Q. Assume that it is several hundred feet from North Water street to the pier, taking the angle at which the shore line cut these lots, would that shore line cut 34 before it struck the pier—assuming it was 500 feet? A. Oh, that was not to exceed 300 feet long.

Q. The dividing line between 34 and 35? A. That was not to exceed three hundred feet. I counted these lots here. I get it that way.

Q. You say that the line between 34 and 35 did not exceed three hundred feet? A. Yes, sir.

Q. What is your best recollection? A. Nothing except what I see here.

COURT.—Did you state from recollection or from what you see there, that was not over three hundred feet? A. I don't pretend to remember anything of that kind in 1833. I believe this, sir, to be correct, [pointing to the map.]

COURT.—You believe that correctly or substantially represents the length of the line? A. Yes, sir, and I have nothing else.

Q. You believe it simply from the fact that you made it at the time? A. Yes, sir.

Q. And intended to make it accurate? A. Yes, I intended to make it so, and I believe it was so. That is twenty-five years ago.

Judge Morris.—And from your recollection and from the appearance of the maps strengthening your recollection, you believe it to be three hundred feet? A. Not exceeding that. I should think short of that.

Cross-examined.

Mr. Lincoln said he desired to ask a few questions, when his associates would cross-examine further.

COURT was inclined to object to a change of the examining Counsel, but no objection being made by the plaintiff's Counsel who had themselves set the precedent, he would allow it in this case.

Mr. Lincoln.—You say you actually measured the north of lots 34 and 35 upon Water street? A. Yes, and drove the stakes.

Q. Did you actually measure the east or west lines, or either of them? A. Neither of them. I did not.

Q. Did you actually run the water-line at the south ends of them? A. I run it as I saw. I did not measure it.

Q. Did you go nearer it, than out at that little fractional lot, which was east of 35? A. For no object of measurement—I did not.

Q. About how near would you be, where you set the compass to the south end of 34? A. Within three hundred feet. About a hundred yards to the south end of 34.

Mr. Arnold.—You mean the east line of 34? A. I mean the line between 34 and 35.

Q. When you set the compass down at the end of the fractional piece you pointed southward and found the course of the shore was not due south, but inclined westward, and you made a line drawing these boundaries? A. I had no reference to anything more than taking the course of the lake.

Q. It made an angle? A. Yes, sir. It met the other lines and cut them all off.

Q. They would never have met if parallel? A. No, sir.

Q. But inclined so that these two would meet if projected far enough? A. Yes.

Q. You preserved that line and that is one of the elements from which you made the map? A. Yes, sir.

Q. You don't remember that angle? A. No, sir.

Q. You acted upon it at the time you made the map? A. Yes.

Q. Would not a very slight error with your mathematical instruments have made a very material error upon that map, a hundred yards away? A. No, sir, not very great at that distance.

Q. How much would an error of one degree carry you off? A. One degree would make about four feet I should think.

Q. Was there anything, at that time, that led you to take any great pains about the southern ends of these fractional lots? A. It was supposed that that pier would come within about two hundred feet of that, and within two hundred feet, I should suppose I was within two inches—one or two inches [of being correct.]

Q. If you had wanted to fix the southern ends of these lots with great accuracy, would you not, as a surveyor, run these lines down and put the stakes in? A. If I had known where the piers were to be I should have run them down certainly.

Q. You made the plat to represent where the lots struck the lake shore? A. Yes, sir, for this distance, you know.

Q. That plat does represent where it struck the lake? A. Yes, sir.

Q. If you had cared to fix it accurately you would have run down? A. Yes.

Q. Then you didn't care to fix it with great accuracy? A. I was within about two hundred or two hundred and fifty feet. I was as close as in any ordinary course.

Mr. Wills.—Were you as acurate for that as for any other part of the survey? Was there any other part, but what you did make measurements? A. Yes, for all this north part. The measurements were not made for more than half this plat. Three-fourths of this plat was not surveyed.

Q. If you had actually plotted and intended to be very sure,

would you not have run down to these south ends, and actually found the places? A. Yes, sir, certainly.

Q. Do you remember that at one time, in looking at that plat, you saw evidence of its having been tampered with? A. I remember of Mr. Scammon and myself talking about it.

Objected to. Objection overruled.

WITNESS.—There was a question arose, at one time, whether that line had not been tampered with. When I first saw it I thought it had.

Q. Explain what you mean by being tampered with? A. It had been endeavoured to be changed.

Q. That was the impression made on your mind? A. In the first place it was. But afterwards, on examining it with a glass, I thought it was not so.

Q. You once thought it had been tampered with, but on further examination, thought it had not? A. Yes, sir. It is very much obliterated now.

Q. The only way you can now determine it is by these pencil or India ink lines? A. This is made of India ink, but one rubs off and the other does not.

Judge Higgins cross-examines.

Q. Have you any recollection as to the general line of the lake shore north of this point? A. Yes.

Q. You stated on a former trial, you thought the line south from the point, at which you struck the lake, run a little east of south? A. I must have been misunderstood, because I tell you, I refer to this, and as I look at it now, I should think by the appearance here it is west of south.

Q. You have no recollection except by looking at that? A. Oh, no, none at all.

Q. You made a map showing it extended east of south, and recorded it in the Recorder's office? A. This was recorded.

Q. But you did make a map, and have it recorded showing that——. Objected to.

Q. About this time you made and recorded a map in the Recorder's office of Cook county? A. Yes.

Q. That map shows a different line?

Objected to. Objection overruled.

Q. Did you make such a record? A. Yes.

Q. What time did you make that record? A. I don't remember, something like a year; probably the next winter after this.

Q. Had you the same means of knowledge at the time you made and recorded that map, of knowing the direction of the shore north and south, as you had at the time you made this map here? A. No. I made it from this.

Q. You stated on your former examination that you thought that the land extending south inclined east of south. Now you

say you have no recollection about it? A. I have no recollection of saying so.

Q. Have you no recollection whether the general direction was east, or west, of south? A. No, it was very near south. But I couldn't tell whether it was east or west.

Q. You wouldn't pretend to say it was east or west of south; you think it was very near south? A. Yes, sir.

Q. This [map] would indicate that it was a little west? You took an observation down the lake or up? A. Both ways.

Q. Was there any difference north and south as to the direction of the lake shore? Did it also run north and south to the north? A. Nearly so, but it inclined to the west.

Q. Inclined until it came down to this point? A. No, sir, I am speaking of looking north.

Q. South it inclined a little to the east or west, you don't know which? A. Yes, I speak from this; I have no memory about it.

Q. You have no memory of the angle? A. No, sir.

Q. All you have you find on that map? A. That is all.

Q. Did you make that up from calculation? Did you consider that of little value? A. Yes, but I wanted to make a map.

Q. That is correct that you made from observation? A. These points I speak of are.

Q. How long is the east line of 35? A. I can't pretend to say.

Q. You stated how long the west line of 35 was, how long was the east line? A. Well, sir, I can tell by this. It is about half the distance of the other.

Q. That would be about one hundred and fifty feet? A. Yes, sir, half the distance of the other.

Q. Your best recollection then is the east line is one hundred and fifty feet? A. I should say less. I have said less all the time, [taking the dividers to measure].

Q. That is only to measure, we can do that? A. That's all.

Q. Then give us your best estimate as you estimate? A. Two hundred and forty feet.

Q. We are not asking anything as to the map, but merely your memory? A. I said two hundred and forty feet before. It's about two hundred and seventy feet.

Q. What is? A. The west line of 35.

Q. How long is the east line of 35? I understood you to say one hundred and fifty feet? A. It's not quite one hundred and sixty feet. It is over one hundred and fifty feet and less than one hundred and sixty feet.

Q. Did you state before, that in consequence of the land being of little value, you paid very little attention to the south end of it? A. There was nothing considered to belong to the survey beyond the pier. That is supposed to be two hundred and fifty feet off from that.

Q. Did you take any observation that you can tell the east line better than the west line? A. No, sir, I got them all the same way.

Q. Your general observation enables you to determine one as well as the other? A. Yes.

Q. Give us the length of the line between 33 and 34, according to your scale? A. [After making a measurement] four hundred and eighty or four hundred and ninety feet.

Q. Did you set any stake? A. No, sir. I noted the water line for about two hundred and fifty feet.

Q. I suspect that as you did not consider the land of very much value, you merely turned the compass down that way and took an observation with your eye? A. No, I didn't do it with my eye. I took the water line. I set the staff in the edge of the water and followed the water line down as far as about two hundred and fifty feet. I intended to be accurate that far.

Q. Did you follow the line of the lake shore any further than you could see? Was there any bend so that a portion was left out of your line of observation? A. I say that beyond that two hundred and fifty feet, I didn't take much notice of it. It was not much different from this.

Q. You took an observation no more than two hundred and fifty feet from where you set your Jacob's staff? A. Yes, sir. That was the distance I intended to be correct.

Q. Beyond that you didn't pretend to be correct? A. No. sir.

Q. It might very considerably? A. Yes.

Q. Who was with you when you surveyed that land? A. Captain Hunter, Robert Kinzie and John Kinzie.

Q. Do you remember Sweet and McGregor being there? A. No, sir.

Q. Do you remember the chainmen? A. Well, I think they did it themselves, John and Robert A. I know they used to drive stakes.

Q. Your recollection is rather indistinct about things that occurred so long ago? A. About some things it is. I remember John and Robert driving the stakes.

Q. You don't remember whether any other persons were present with a view of buying or otherwise? A. No, sir. I don't remember. There was a good many people around occasionally.

Q. Didn't you state on a former trial that the reason you did not take any pains to have an accurate survey was because the land was of no value, and the owners were with you? A. That was in relation to this south of this.

Q. We concede that your survey was accurate as far as you went, but that you did not take this down here with accuracy. The parties who were with you did not direct you to take any

pains to be accurate? Did you state so on a former trial? A. I think very likely I did.

Q. Was that the fact? A. Yes.

Q. Are you as well satisfied as to the length of the lines between 33 and 34 as between 34 and 35? In other words which line would be most likely to be correct? A. Well, the shortest one.

Q. Then the line between 34 and 35 would be more accurate than the other? A. Yes, sir.

Q. You took an observation with considerable accuracy about two hundred and fifty feet down the lake? A. Yes, two hundred or three hundred feet.

Q. And you say the line on the map on the east side of 34 would be more likely to be correct than the one between 33 and 34? A. Yes, sir, the more accurate.

Q. You have no means of remembering any thing except as your memory is refreshed by looking upon the map? A. No, sir.

Q. Did you state on a former trial that you were not a good judge of distances? A. Well, comparatively I am. I don't know whether I am or not.

Q. You have no recollection of that angle, except by that map? A. Yes, sir.

Q. And you have no doubt that the east line of 35 is more accurate than the west line of 35? A. Yes.

Q. And you say the length of that line was between one hundred and fifty and one hundred and sixty feet? A. That was nearer one hundred and seventy.

Q. You said the east line of 35 was between one hundred and fifty and one hundred and sixty feet? A. Yes, I did say about that, (measuring on the map with the dividers.) It's over one hundred and thirty feet.

Q. It is not over one hundred and forty feet? A. No, sir, it's a little over the width of two lots. It's one hundred and thirty feet and upwards.

Q. You said there was nothing connected with the survey to fix the transaction on your mind. Do you remember now any thing other than this to fix it? A. Nothing of any consequence. I recollect of making the survey.

Q. Is that the first map you ever made? A. Yes, sir. It's the first map I ever made from actual survey.

Q. You had made drawings before, but had you done any thing more than copying a map? A. Not from field notes. This was the first I ever made.

Q. The shore lines in water colors could be washed, or sponged out, could they not? A. Yes, sir. It can be sponged out. You can't obliterate it entirely.

Q. You have no recollection of the facts and distances on that map, except as appears on that map? A. No, sir.

Q. Was it more than twenty-four feet from the north east corner of 35 to the water? A. I state that as my best recollection.

Q. You stated that a number of times on a former trial? A. I presume so.

Q. If that line of twenty-four feet from North Water Street gave one hundred and thirty on the lake, how far would the next lot go—how much would the whole eighty-four feet make? A. That is a calculation.

Q. Would it not be four or five hundred feet? If twenty-four feet gives a line of one hundred and thirty feet, eighty-four feet west would give four or five hundred feet along the lake? A. I can sit down and calculate it for you. I have not attempted to give it to you precisely, only approximately. I don't pretend what I have given you there is correct.

Q. That is what I suppose; it was of no value? A. No. I took a scale of sixty feet to get my measurements from.

Q. You gave three hundred feet as the length of the west line of 35, now what is it accurately; sit down and take the compass? A. I can't give it very accurately, as this has a glass over it, and this has a scale of four hundred feet. [Witness proceeds to make the measurements.]

MR. WILLS desired the witness might have time to make the measurement.

Mr. Van Arman examines.

Q. Is the shore line a straight line? A. It seems to be a curve.

Q. If it were a curve your one observation would not be worth much? A. It would depend on where it reached.

Q. Can you take a curve line by a single observation, without offsets? A. No, sir, I have never pretended to know any thing of the south end of that line.

Q. From the north to the south end you found it to be a curve, as on the map? Yes, sir, as far as the map goes.

Q. Can you take a curve line by a single observation? No, sir.

Q. Did you make more than one there? A. No, sir.

Q. How would you take an observation of a curve line? A. In a good many ways.

Q. What is the usual way—by offsets? A. Yes, and by running of ordinates.

Q. But the customary way is by offsets, for irregular lines? A. Yes.

Q. That you did not do here? A. No, sir.

Q. Then you could not tell whether this curve line was correct where it was located? A. Two hundred and fifty or three hundred feet, I think, was correct.

Judge Higgins resumes the examination.

Q. How long is that line on the east side of thirty-five—give it to us certainly, exactly? A. I can only determine as it is here. [The witness measures the distance on the map with the dividers.]

As nigh as I can measure it—and I can't measure it there very closely—it is about one hundred and twenty feet. That's as near as I can measure it. The shore appears to go beyond. I am measuring now to the end of this line.

Q. There is a line still extending further down? A. No, sir, there is an appearance of a lake shore here.

Q. But extending in the direction of that line, and not west of it? A. No, sir, there is not.

Q. You make it a hundred and twenty feet now? A. Yes, sir, something like that.

Direct examination resumed by Mr. Arnold.

Q. You spoke of having had an impression at one time that this map had been tampered with. A. Yes.

Q. And upon further examination, you were satisfied that it was the effect of time and usage? A. Yes, and wear. I don't see any thing that has that appearance now.

Q. This map has been examined at all the trials heretofore? Y. Yes.

Q. When did you first discover the scratch or injury? A. I think it was at the second trial.

Q. Do you know in whose possession the map had been from the first to the second trial? A. I know that there was some sharp shooting.

Objected to.

Q. Do you know of copies having been made from this map? A. Yes, sir, I made some afterwards.

Q. Where are these copies? A. I have some.

Q. How did you make the copy that you have? A. I laid this old map down on the top of that, and pricked down through it by pins, and then drew the map from that.

Q. When were these copies made? A. I don't know—from time to time.

Q. Those copies agreed with this? A. Yes.

Q. You spoke about having made a copy for the record about a year after this was made? A. I copied this into the record.

Q. Did you make that in the same way you did the others? A. Yes.

Q. There is a discrepancy between that and this, is there not? A. Yes.

Q. You did not prick the point through in regard to that position of the lake shore? A. No, sir, I did not.

Q. That is the reason of the inaccuracy? A. Yes, sir.

Q. That's the only discrepancy? A. Yes, I think that's the only one.

Q. By accident or carelessness you made a mistake? A. Yes, sir.

Q. The copy is not an accurate copy of this map? A. No, sir. It is accurate with the exception of this part of it down here.

Q. You state in regard to the accuracy of this line, that you arrived at it, at a distance of two hundred and fifty or three hundred feet? A. Yes, at two hundred and fifty, I say.

Q. All this you understood was governed by a supposed harbor that was supposed to be two hundred and fifty feet distant, and to that point you can state that this map is accurate within a few inches? Yes, sir.

Q. This water line was originally made in India ink? A. Yes, sir. It is very much faded. It did not take hold of the paper as where it is made with a pen. These other lines are made with a drawing pen. This was with ink—done with a brush. [Indicating a point on the map.] That made with a pen takes hold more, and the other is only on the surface.

Q. Are not all these measurements you have made upon this scale over the glass less accurate, than if you had placed your dividers on the map itself? A. Certainly.

Q. Or if the scale had been less? A. Yes, sir. It is two hundred feet to an inch.

Q. In measuring on the glass you are at least an eighth of an inch from that paper? A. Yes, all of that.

Q. And you would be liable to make a good deal of error by making the measurement through that glass? A. I might make some.

Court adjourned until to-morrow morning at half past nine.

Second Day—Saturday, March 24, 1860.

Court met at half-past nine o'clock. The jury being called the trial proceeded.

JAMES H. REES, called by the plaintiff, being duly sworn, was examined in chief by Mr. Arnold, testified as follows:

Q. How long have you resided in Chicago? A. Twenty-five years nearly.

Q. What is your occupation? A. A land agent it has been.

Q. What is your profession? A. Surveyor.

Q. Do you know lot No. 34 in Kinzie's Addition? A. Yes, sir.

Q. Did you serve the declaration in this case? [presenting a document.] A. Yes, sir, I did, June 26th, 1849.

Q. Do you know the ground in dispute here? A. Yes, sir.

Q. Were the defendant's at that time in possession? A. They were.

Q. Was there an enclosure or fence? A. There was an enclosure. The ground was fenced in. Mr. Marsh had built upon it a slaughter-house, or packing-house, or something of the kind.

Q. How far was that building from the pier? A. I should think, perhaps, from seventy-five to one hundred feet.

Q. Do you know who put up the fence? A. I always understood it was put up by Mr. Jones, or under his direction.

The Court thought it unnecessary to prove possession by the defendants.

Q. [Presenting original map.] State what map that is? A. That is the map of Kinzie's Addition—the original map.

Q. Did you know Mr. Woolley, the County Surveyor? A. Yes, sir.

Q. Do you recollect when and where you first saw that map? A. I don't recollect. I know it was as early as 1837. It was in the Recorder's office at that time.

Q. Did you take it from the Recorder's office? A. I don't think I ever took it from the Recorder's office. I saw it there.

Q. Did you make a copy of it at the Recorder's office? A. Yes, sir.

Q. Where was it? A. I don't recollect.

Q. Was it among a large collection of maps left there? A. Yes, sir, I think it was—not a great many, there were more or less there—I don't recollect how many. The map of the original town and others were there. I found it there and left it, after making a copy of it.

Q. [Presenting a map.] (Ex. "A.") Is that a copy? A. That is a copy I made, I think in May or June, 1837.

Q. How did you make it? A. I made it by laying the original map on this paper and pricking all of the prints through.

Q. Then you are enabled to state that this is an accurate copy of that map? A. Yes, I think it is. It was intended to be as accurate as possible.

Judge Higgins enquired the object of the testimony.

After further discussion it was agreed that the plaintiffs should go on and make their preliminary proof on this point—the defence reserving the right to object.

Q. You stated that you found this in the Recorder's office with some other papers, in 1837? A. Yes.

Q. Then you made this copy by laying the original down on a piece of paper and pricking the holes through? A. Yes, sir.

Q. At the last trial and before this map had been framed, did you see the holes you had made in the paper by pricking through it? A. Yes, sir.

Q. Did you measure the lines on the copy? A. No, sir.

Q. At the former trials did you, for the purpose of testing the correspondence of these two maps, measure the lines with the dividers and find them to agree? A. I think I did measure some of them.

Q. You found no discrepancy between the two maps? A. No, sir.

Q. Did you observe the length of these lines on the lake shore, or how were they obtained? A. The ends of the lines were all

marked by the point of a pen, or some such instrument, on the shore, as well as every other part.

The question upon the admissibility of the original map being brought up again, after further discussion by counsel on both sides, the Court decided that he would, as in the case of an illustrative diagram, admit the original map as evidence, to go to the jury in connection with the testimony of the witnesses, not as showing conclusively where the water line was in 1833, but as something to be considered by the jury, if in their opinion the statements of the surveyor or other testimony in the case establish its correctness, but not to be considered as of any weight independent of such testimony.

Defendant's counsel excepted.

Mr. Lincoln asked if the plaintiff's counsel would also allow him to use Rees' copy.

Mr. Arnold said he might use it by way of illustration. The plaintiff would not suppress it.

Q. State whether you have examined the lengths of the lines on that map, and if so, what they are? A. I have examined them, and find the east line of 35 to be about one hundred and fifty feet, and the west line three hundred feet in length from North Water street, until they strike the shore of Lake Michigan. The dividers are rather dull. The east line is about one hundred and fifty, and the west line, which is between 34 and 35, is about three hundred feet.

Q. After making this copy, did you leave this map in the Recorder's office? A. Yes, sir.

Q. Do you know how long it remained there? A. I do not.

Q. Did you make any other copy beside this? A. I don't recollect of ever making another.

Q. (Presenting another map.) (Ex. "B.") Do you know whether there was a copy made by a Mr. Thompson? A. I don't know who made this.

Mr. Arnold desired to reserve the right to recall this witness, in reference to "Thompson's map," when it came in.

Cross-examined by Mr. Van Arman.

Q. You say when you served the declaration on the defendants you found the land enclosed? A. Yes, sir.

Q. How were you acquainted with location of lot 34? A. I have measured it.

Q. Can you tell whether, at the time you served that declaration, there was a fence on that line between 34 and 35? A. I can't now. There was a fence run down to the lake, between Water street and the pier, running from the west line of 35, I should think, to the lake.

Q. You can't state whether there was any between 33 and 34? A. On reflection, I think there was a fence there. I think 33 and 34 were occupied.

Q. Did you ever run that line? A. Yes.

Q. When? A. I think in 1847.

Q. So that you know where it is? A. I did at that time.

Q. You would know whether the fence was on it or not? A. Yes.

Q. How long had you noticed that fence before 1849, when you served the declaration? A. I think the fence was put there perhaps in 1847. I leased the lots for Mr. Johnston—the two lots for a distillery. I think it was that year or the year before.

Q. Had not there been a fence on before? A. Never, I think, until it was leased to Keith & Whitcomb for a distillery.

Judge Morris—It was surveyed for that purpose, was it? A. Yes.

Q. How long had you known that land, and been in the habit of seeing it? A. I have known it since 1835–6.

Q. Did not Mr. Jones build a fence on that same line long before that? A. I think not—but I am not certain as to that. It is possible that there was a fence before, but I don't think there was.

Q. Did you ever see a cedar post down on that line, at the southern end, where it struck the pier? A. I don't recollect as to that.

Q. Your attention never was called to it? A. I. don't recollect that it was now.

Q. What sort of a fence was this you saw there? A. A board fence.

Q. You are a surveyor? A. Yes.

Q. Do you understand the science or practice of surveying? A. Yes.

Q. How is the water line laid down on that original map? A. It is laid down I think, perhaps, with India Ink.

Q. Is it regular or irregular? A. It is irregular.

Q. Is it straight or curved? A. Curved, sir. It is laid down on the map as a curved line.

Q. In surveying, if you wish to locate a curve, especially an irregular curve, can you do it by a single observation, or from a single point? A. No, sir, not accurately.

Q. How would you locate an irregular line—like the bank of a river or lake? A. I should locate it by the eye, between the points terminating the lines.

Q. But would not you take offsets between the points for accuracy? A. Yes, if the points were not near enough together.

Q. How near is near enough? A. I should think on a curve like that, where the curve is so little, you could lay it off by taking points of two or three hundred feet.

Q. Would you be able to take it by taking a single point and sighting back two or three hundred feet? A. Not accurately.

Q. Could you approximately, sufficiently for measuring valuable property. A. No, sir.

Q. Have you any means of ascertaining the shore line of the east line of the fraction? A. No, sir, I have nothing here that represents degrees.

Q. You can ascertain, can't you? A. Yes, sir, but the line is an indistinct line, representing the shore, so that it is difficult to ascertain with accuracy.

Q. Suppose the base of a triangle is twenty-four feet, and the angle at the outer corner is such that the two legs of the triangle meet at the distance of an hundred and twenty feet; that the next line is a right angle to the base, so that it is right angle triangle. Now increase your base to eighty-four feet, still preserving the right angle, what would be the length of the west or perpendicular line? A. It would be in proportion. I would have to make a calculation.

Q. I wish you would make it? A. It is in proportion to 130, as 84 is to 24. (After calculation.) It is five hundred and twenty-five feet.

Direct examination resumed by Mr. Arnold.

Q. Can you state about how much of a deflection from a straight line, the shore makes to the west, from the place where the east line of 35 cuts the water, until it strikes the point where the east line of 34 cuts the water? A. I should judge about 15 degrees towards the west; that is the shore would differ about 15 degrees from the lot lines.

Q. If the line of the shore deflected in that way, the data from which you made that computation, would not be that correct data for obtaining it according to the plat? A. No, sir. The course of the shore I am taking is the course of the front of the lot, the base they gave me was the course from this point [indicating it on the map,] to a point 24 feet out there—24 of the northeast corner of lot 35. The course here is considerably different from that.

Q. I understand you state that you surveyed this land for Mr. Johnston in 1847? A. Yes, sir. '47 I think, or '48.

Q. That was preparatory to leasing it to Keith & Whitcomb? A. Yes, sir, about the time it was leased to Keith & Whitcomb. I don't recollect now, but it was either leased by Mr. Johnston himself, or by me, as agent. In '47, I think, or possibly in '48, I made the survey preparatory to their taking possession, and this fence was put up there afterwards.

Q. You were not here until 1836? A. In 1835, I was here.

Q. Do you know any thing about the lake shore in '35? A. No, sir, not definitely.

Q. Had any accretion formed in '35? A. I can't speak definitely. I was here in May, 1835. During the whole of my ob-

servation, there was a constant accretion going on, on the north side of the pier.

Q. You don't know exactly where it began? A. No, sir.

Q. Do you know that they first put the pier up to about the level of the ground, and afterwards it was raised up higher? A Well, I don't recollect particularly as to that.

Q. You have followed the businesss of surveying here a good many years? A. Yes.

Q. Have you made surveys in Kinzie's Addition? A. Yes.

Q. State what is the general accuracy of Mr. Snow's original survey of that plat?

Objected to. Objection sustained.

Mr. Arnold desired to know whether the defence would insist that the original map had been altered.

Judge Higgins said they would examine that matter.

Mr. Arnold.—Then I will assume that you make that point.

Q. It is in the same condition it was in when you made the copy, with the exception of the wear? A. I don't think it is in the same condition. I think there was a piece torn off this lower corner, and I think there has been some scratching and alteration on the north end of lot 35. I think the whole north end has been scratched out and the line drawn again. I mean the north end of water lot 35, on the street. It doesn't look like the other line, or as though it was put there with the others. It is the line on North Water street.

Q. Do you see any indications of its having been changed on the shore there? State whether it has not been changed since it was recorded by Doctor Egan, and whether a part of his name has not been erased? A. I could not say as to that. The map appears to have had hard usage. I couldn't say as to whether it has been altered. It has been handled a good deal. It is difficult to state as to that.

Q. In name of "W. B. Egan," is the lower part of the letter "g," there, or is it not there? A. I think the "g," is there. It appears very light. It would be difficult to distinguish. I think a glass would show the line perhaps. The mark appears to be very fine.

Second cross-examination by Mr. Van Arman.

Q. Do you say some portion of the lake shore, you think, may have been altered? A. I didn't say it had. It might have been. The map appears to have been used hard.

Q. What do you judge from? A. From the appearance of the map.

Q. Any thing else? A. No, sir, solely from the appearance of the map.

Q. What part of the lake shore do you judge has been altered? A. From Water street south, along the line of the lake shore south of Water street.

Q. The whole distance? A. No, sir, it does not appear to be changed the whole distance. It appears as though it might have been scratched down as far as the middle of the shore line of water lot 35.

Q. Didn't you swear upon a former trial of this cause, that it appeared as though altered below that—that it looked as though it had been scratched? A. I might have done so.

Q. Have you any recollection whether you did or not? A I have not. I have no recollection about it.

Q. What alteration did you say has been made here? A. The north line of water lot 35. I do not say there has been any alteration in the shore. I don't think there has. I say it has been hard used, and looks as though it had been hard used. I think it appears to have been more used there. It may have been from more interest having been taken in that part of the map. It may be entirely by wear and tear.

Q. Compare that with your copy and see if the shore at present represented there, compares with your copy? A. Very nearly. The shore on the original map is made in such a manner that it does not show clearly and distinctly the shore line.

Q. How long is it on your copy—the east line of 35? A. It's about one hundred and fifty feet.

Q. When you made your copy, how did you get your shore line on the copy? A. By pricking through the end of these lines all of these lines struck the lake.

Q. You say all these points appeared to have been pricked through before that? A. It appeared to have been before that.

Q. You simply stuck the pins through the same holes? A. Yes. Through the same places.

Q. That is as accurately as you attempted to lay down the shore line? A. Yes, and looking at it from point to point.

Q. You say this, at present, corresponds with your map in '37? A. Yes, sir, in the main. In a broad line it is difficult to state. It is not shown as clearly as upon that, [copy.]

Q. As near as you trace it, does it not correspond with yours, in reference to these lots? A. Yes, I think it does.

Q. Then, if it has been altered, it must have been altered back? A. It may be. It appears to be in the same place. So does the north line. It appears to have been scratched out and put in again.

JOHN H. KINZIE, called for the plaintiff, being duly sworn, examined in chief by Mr. Arnold.

Q. (Presenting a document). Is that your handwriting? A. Yes, that is correct. It's mine.

Mr. Arnold offered in evidence, the document alluded to, viz.: the order and receipt of John H. Kinzie, for the original map, as follows:

"July 19, 1850.

Mr. Jones wishes to have the original map of 'Kinzie's Addition.' Will you please let him have it, and oblige,

Yours,

JUDGE MORRIS,
J. H. KINZIE."

Mr. Arnold resumed the examination.

Q. How long have you resided here?

Mr. Lincoln—I believe he is common law here, as one who dates back to the time whereof the memory of man runneth not to the contrary.

WITNESS—I was brought here, I believe, about fifty-six years ago.

Q. You have no recollection about it yourself, I suppose. A. Yes, sir.

Q. State what portion of your life you have spent in Chicago since that time? A. I spent the early part of my life here, up to 1812. I was away four years, and returned in 1816; I went away and then returned again in the spring of 1824; went away that year, and returned in 1833, and remained, and have been here ever since 1834, I may say. I was away a good part of 1833.

Q. Did your father reside in Chicago? A. Yes.

Q. Where was his residence? A. It was at the corner of Pine and North Water streets. In 1824 I stayed here but a short time, I was on a visit here at that time. My parents were living here. I went away again, and returned in '33.

Q. [Presenting the "Original Map."] Point out on this original map the place where your father's residence was? A. At the north end of water lot 24, on North Water street, on the corner of Pine and North Water streets.

Q. Was there any old land mark there until recently, where the old house was? A. There were some trees there, sir—one in particular.

Q. What tree was that? A. It was a poplar—a large Balm of Gilead.

Q. Sometimes called cotton-wood? A. Yes, it was cotton-wood.

Q. When was that tree cut down? Has it been since this suit was pending? A. Yes, it was cut down when Mr. Wentworth was Mayor, the first time—during his first administration. It stood in the rear of our house, just about the corner of Pine and North Water streets.

Q. What do you know about that tree? A. It was a tree I put in the ground myself. I planted it there, sir, I think in 1811. It was quite a small one. There were two trees put there at that time.

Q. Your father resided in that house in front of the tree for many years? A. Yes, sir.

Q. What degree of familiarity did you have with the lake shore

over there, down to the time Kinzie's Addition was laid out? A. Well, sir, I was away a good part of the time, up to the time Kinzie's Addition was laid out. In my early days I was very familiar with it, until I was fifteen years of age.

Q. Where did you get water for the house? A. We used to get it from the lake, I frequently used to help our man to carry it across the beach.

Q. From the house you used to go down to the beach, eastward to the lake to get water for the house? A. Yes, sir.

Q. Was there any considerable change in the appearance of the shore down to the time the piers were constructed? A. No, sir, I do not recollect of observing any change previous to the location of the piers.

Q. Were you in the habit of visiting the lake for any other purpose other than the getting of water? A. Yes, sir, I used frequently to go to bathe, to hunt birds, and collect stones.

Mr. Lincoln—And paddle in the water, like boys usually do? A. Yes, paddle in the water, and travel up and down to the mouth of the river.

Q. [Presenting the map of 1818.] How does that look, in reference to the localities? A. That is very much like it, sir—except I should say the end of the river here is wider than it is put down here. It is represented to be very wide down here, and it is wider further up towards the bend, [Illustrating by the map.]

Q. Do you remember the time when Kinzie's Addition was laid out? A. Yes, sir. Kinzie's Addition was laid out by Major Hunter and myself, and my brother, Robert A. Mr. Snow was the surveyor.

Q. You and your brother Robert A., and your brother-in-law, Major Hunter, were the proprietors? A. Yes, sir, we superintended the laying out of the addition.

Q. Do you remember what time in the year it was? A. It was in February, 1833.

Q. What sort of weather was it when you made the survey of North Water street, approaching lake Michigan? A. It was very fair weather, and a very pleasant day.

Q. How in regard to wind? A. It was perfectly calm. It might have been a little wind—if there was any it must have been from the westward.

Q. Was there any ice along the lake shore at that time? A. I did not notice any, I don't recollect of seeing any ice along there.

Q. Was the ground frozen, or did you drive stakes into the ground? A. Yes, sir, we drove stakes into the ground—there might have been a few we couldn't drive in, but almost all of them we drove into the ground. It was very mild weather that winter.

Q. Do you remember about laying off those water lots? A. Yes, sir. These water lots were laid off by Mr. Snow. I accompanied him. They were laid off sixty feet apart. We concluded

to extend them out to the lake, to see how many there was, merely from curiosity sake. I don't think probably they were of any value, but we thought we would continue the lots out to the lake, and we did so, and as we approached here towards the last, two or three times in coming over we got Mr. Snow to sight and see whether these lots running south would strike the lake. When we got to the last lot here we stopped and made an observation to see about how much land was left.

Q. About how many feet from the lake shore at North Water street did that last lot or stake come? A. About twenty-five feet. I should say, to come as near as I could, twenty or thirty feet—that was from the line going east; we should have gone that far to the water. That would have been lot 36, if we have made a lot of it. Lot 35 was the last lot we made, because there was not enough to make another.

Q. When you got to the line between 34 and 35, did you take a sight down the lake? A. Yes, I believe we did as we approached the lake, the last two or three blocks.

Q. For what purpose? A. Merely to see where the line would strike the lake.

Q. How far did that line running straight from Water street, where you took the observation between 34 and 35, strike the water? A. I should say about three hundred feet in round numbers.

Q. Did you notice how far down the east line would strike it? A. I should call that about half that distance.

Q. What was the shape of the shore opposite these two lots? A As it is all along the lake, there are little curves more or less, this was slightly curved to the west.

Q. [Presenting the original map.] Look at that map, and give to the jury as near as you can, your recollections in regard to the lake shore line?

Judge Higgins objects to his looking at the map.

WITNESS.—[Without looking at the map.] A. All that I can recollect is, there was a curve there; what the depth of that curve was, I could not say, but then it was perceptible looking at it.

Q. From the point where the east line of 35 struck the lake there was a perceptible curve you say? A. There was a curve there you could notice from a half to a quarter of a mile above, and for a mile or two below. There was quite a curve in the lake, and this formed a part of it.

Q. Your recollection is, that where you got to 35, in looking down the lines it was about one hundred and fifty feet? A. I think so. The west line was in the neighborhood of three hundred feet, and the other I called one hundred and fifty feet, it might have been more.

Mr. Arnold.—[Again presenting the map.] Is this the map that

was in your possession, and which you refer to in that receipt? A. That is the map.

Mr. Arnold proposed to ask the witness to look at the map, and state how it agreed with his recollection of the shore at the time of the survey.

Judge Higgins objected to this course as leading the witness—he desired to have him interrogated further in regard to the conformation of the lake shore before the map was placed in his hands.

Q. You state that your recollection of the lake shore, opposite 34 and 35 is, that the line curved to the west? A. Yes, sir.

Q. Can you state how much? A. I could not.

The Court examines.

Q. We want to know the position of that shore line in reference to these lots—you have stated the length of the line between lot No. 35 and the lake, at the time of the survey, to be about twenty-four feet? A. Yes, sir, on the north-east corner.

Q. Now, what is your recollection of the shore line going south from that point? A. All that I know is, that the lake curved along that shore for several miles, and it was very perceptible at that point. In looking up and down you could see that there was a curve along there. What the depth of that curve was at these lots, I could not say; my impression is, that the west line was about three hundred feet, and the east line about one hundred and fifty feet, or thereabouts.

Q. And the difference between these lines shows the curve? A. Yes, I suppose so.

Judge Higgins.—Is that all you know about it? A. That's all.

Mr. Arnold objected to the counsel's question.

WITNESS.—This is mere guess work about the length.

Judge Higgins desired to have certain farther preliminary questions asked before the map was presented to the witness.

Mr. Arnold.—I will ask these questions.

Q. Where was the point on the shore in reference to North Water street, in which the land went out farthest to the east? A. About where Lill's brewery now stands. That is where I could see the commencement of the curve. I could take that in, and a mile or two below, I suppose.

Q. Now, where was the curve in Kinzie's Addition? Where, in your opinion, was the most eastern projection of the shore—the greatest bulge of the curve? A. Well, I should say, it was at the northeast corner of Kinzie's Addition.

Judge Higgins—Is that the point where you run to the lake shore? A. It is at the point where we run to the lake on the south side of Chicago Avenue; Kinzie's Addition extends to Chicago Avenue.

Mr. Arnold examines.

Q. Do you understand me? What portion of Kinzie's Addi-

tion went into the lake furthest? A. It is where the brewery is. It might have been a short distance beyond that line, but there you could see the point of the curve.

Q. Was that where the curve began? A. It commenced in that neighborhood. I should judge it began in that neighborhood. To go on the beach there, and look up the lake, it appeared like a curve from the northeast corner of Kinzie's Addition, or a little beyond, probably.

Q. What was the most easterly street? A. Sand street.

Q. You didn't lay out any street east of Sand street? A. No, sir, there were lots east of Sand street, down at the south part of Kinzie's Addition.

Q. Were these at the north part? A. No, sir, it had about run out there.

Q. If that is the case, the land projects further into the lake at the south part of Kinzie's Addition, than at the north? A. Yes. But from the appearance, standing on the shore, the curve looked so.

Q. What part of Kinzie's Addition did, in fact, go furthest into the water? A. That part of Kinzie's Addition was the south part that went furthest into the lake.

Q. What street, running east and west, went furthest to reach the lake, do you remember? A. North Water street.

Q. The very street upon which these water lots abutted? A. Yes, sir.

Q. How was it north of North Water street? A. My impression is, it was a curve there.

Q. Which way? A. Westward.

Q. Both south and north of North Water street? A. Yes, sir.

Q. Do you recollect anything more of the shore, that you can describe? A. I should say there was more of a curve from about where the pier is now, than there was from that down below, more to the west.

Q. From North Water street, where the pier is now, the curve was more rapid than further down? A. Yes, if you would go to the lake shore along there, you would see these curves one after the other—indentations.

Q. Which was the most towards the west, the curve north, or the curve south of North Water street? A. That north of it, I think. I should say, that which was north of the pier was rather more west than that which was south.

Q. You say from North Water street the curve south of it was further inland down below the piers? A. No, sir, I think the curve was further inland north of the pier, than it was south. It is a very nice distinction; still, that is my impression.

Q. In other words, between the place where the pier now is, and North Water street, there was a curve inland? A. Yes, sir, a slight curve.

Mr. Arnold now proposed to place the map in the hands of the witness, and examine him further in reference to the localities.

Judge Higgins objected, and desired that he should first state the particular point at which this curve commenced, south of the point at which they surveyed to the lake shore; and that other questions be asked, before he looks at the map. He objected to the map being presented to him, on the ground that it was leading the witness; the map was not made by the witness, but only seen by him since it was made.

The Court overruled the objection; to which ruling defendant's counsel excepted.

THE COURT.—Have you stated all you know about it, without the plat? Yes, sir.

Q. State, Mr. Kinzie, how that map represents the localities? A. [The witness having examined the original map.] I have been looking at this map. I was always under the impression that the curve was west. Here it seems to be east—the curve from Chicago Avenue.

Q. State how that map agrees with your recollection in reference to these particular points, [east extremity of North Water street and vicinity.] A. At this particular point it agrees perfectly with my recollection. There was this little strip of land here that was left after we had surveyed this last lot. It was of a triangular form. I speak of this fraction east of lot 35 to the lake, running off to a point.

Q. How does it agree with your recollection, in regard to lots 34 and 35, and the lake shore opposite? A. That part agrees very well with my recollection. It agrees with my recollection perfectly—lots 34 and 35 and that little fraction.

Q. If there is any part of it that does not agree with your recollection, state it? A. It is this north part.

Q. Point it out? A. [The witness here passed around the table, where the counsel were seated, to the jury, and pointed out to the jurors the locality referred to.] The lake here appears, in the north part of Kinzie's Addition, to me, to be a little too much west to correspond to my recollection. I should say it was further east. The land was further east here, and coming in this shape, curving in that way, [illustrating,] this part down here corresponds very much with my recollection; because I recollect in regard to this little lot—this little strip. It was about twenty-five or thirty feet to the east.

Judge Higgins—How far was this north point east of where it seems to be on the map? A. I couldn't state, exactly. I could observe it seemed to come in that way. My idea was, the lake was in, curved in that way, [illustrating.]

Judge Higgins—You say that Chicago Avenue was the furthest point east, according to your recollection? A. Yes, sir. Standing on the lake shore, and looking up that way, it would appear

to be. It was a sort of bending out into the lake. This does not have that. I think this land on Chicago Avenue ought to be further out. It was surveyed, and it may be correct, but that was my impression. [To a juror who asked a question—inaudible to the Reporter.] The west line of 35 was about three hundred feet, I think, and the east line one hundred and fifty feet, and the little strip outside about twenty-five feet at the upper end, running to a point.

A Juror.—Did you make an estimate of these lines at the time of the survey, or since the commencement of this suit? A. At the time of the survey.

Judge Morris proceeds with the examination.

Have you any recollection of the spot where the lake shore was when the pier was commenced? A. It was about the same point where it was when the survey was made. I don't know that there was any change. I don't recollect of observing any from the time it was surveyed in 1833 to 1834. I believe it was 1834.

Q. Do you know where the first crib was put down on the lake shore? A. No, sir.

Q. Have you been shown a spile called "Shapley's spile" in the pier? A. Yes, sir.

Q. Can you tell where the lake shore was, originally, at the time the pier was commenced, by that spile? A. That spile was a short distance, I suppose thirty or forty feet, west of the lake.

Q. The spile called Shapley's spile was thirty or forty feet west of the old lake shore? A. Yes, sir.

Q. How do you know that? A. At the trial, before I went down there. I knew just about where the lake shore was, and I took an observation towards the pier, about in the direction of the lake shore, and I struck the pier, and I was shown Shapley's spile, which was some thirty or forty feet west of where I located the lake shore.

Q. Where were you standing, when you took your view south, and made that location? A. I was standing about twenty five or thirty feet from the northeast corner of lot 35. Then I took an observation up and down, and located the lake shore.

Q. What did you observe? A. There used to be some pine trees down about a mile or two below here. I looked down, and at last located them. They were not there, but I located them. I thought they were about in that direction, and that was my guide. Having located them, I just started from that corner and went to the pier. After establishing the point where I looked from, which was near the northeast corner of lot 35, I looked up and down the lake shore, and took my bearing from where there used to be some pine trees, some mile or a mile and a half down below here. I took that for my direction. I knew the lake shore went very near those trees, and I then went to the pier and

struck the pier about thirty or forty feet east of what was called "Shapley's spile."

Q. Did you know Shapley's spile before that time? A. No, sir.

Q. Nobody had shown it to you before you had located the lake shore? A. No, sir.

A Juror—Where did that line strike the pier, according to the lots? A. Between 34 and 35.

Q. Which side of that line did the line of the old lake shore strike the pier? A. I could not tell exactly without looking.

Q. You had no reference to that? A. No, sir. I found out where Shapley's spile was, and I made that out.

Mr. Arnold resumes the examination.

You started from this spot east of 35 to where the old lake shore would strike the pier. A. I intended to follow the course of the old lake shore.

Q. At the pier you designated, where the old lake shore would strike the pier? A. About where it was. I was told where Shapley's spile was, and it was thirty or forty feet from that.

Q. You designated the shore first? A. Yes, sir.

Q. With what degree of certainty do you speak? A. I feel perfectly confident that my starting point was correct.

Judge Higgins objected to testimony as to feelings.

Q. Was that the lake shore? A. It was the old lake shore, I am positive, within four or five feet, where I started from, and I think, with my direction, I was about as near correct when I got to the piers.

Judge Morris.—That you were not more than four or five feet from where the old lake shore was? A. Yes.

Q. You are equally positive as to that spot, as the other? A. I could not say. I was not on that spot [before.]

Q. Who was there? A. I don't think there was anybody there. I went once with Morgan Shapley.

Q. Don't you remember that on the former trial we asked you to go down by yourself, with nobody with you, and go to the place on the pier where you recollected the old shore was? A. Yes, and then I got Mr. Shapley to go with me, and I believe Mr. Miller went with me, and they pointed out the Shapley spile.

Q. You first went alone, and found the spot, and afterwards you went with Shapley and Miller, and found the spile? A. Yes, I found the spile was thirty or forty feet west of where I located the lake shore.

Q. Were you present at the time they attempted to pull up Shapley's spile? A. No, sir, I was not.

Q. [Presenting Original Map.] Why was that change made in the direction of North Water street? A. It was to make water lots. If we had run these streets at right angles, that would have been run into the river after a time. But these were to be water lots. These streets along here were made to preserve water

lots along the river, as you will see by the map. We run North Water street this way from Wolcott street to make water lots, but at this angle we made a street here, to run out straight up to the lake, leaving the south line of that street far enough north to give us a pretty good water lot, about 75 or 80 feet.

Q. You used to have a warehouse there? A. Yes, sir, on lots 20 and 21. There were water lots along here.

Q. At that time had you any expectation that a harbor would be cut through there? A. Yes, sir. I got my impression from Captain Blake, who was an old sailor, who said that———

Objected to.

Q. Was it expected to be parallel with this street? A. No, sir, that was to make water lots. The street was not made in reference to the pier at all, but merely to make water lots.

Judge Higgins.—Water lots with a pier frontage? A. Yes, all of them to have a pier front, wherever it would be.

Q. Was the direction of the pier changed from what you expected when you laid out these lots? A. When I laid out the lots, I had no particular idea of the direction of the piers; I thought they would run north-east, across; I thought the river would run straight out.

Q. It was not so constructed? A. No, sir. I believe it was altered a little to run further south.

Q. Which way did your father's house front? A. It fronted south. It fronted water lots 24 and 25, rather more on 24 than on 25, at the north end of 24.

Q. Was there a piazza on the front of it? A. Yes, the whole length of it, looking towards the south.

Q. Looking from the piazza south, where was the old channel of the Chicago river?

Objected to. Question withdrawn.

Q. Tell where old Fort Dearborn stood? A. It stood on the south side of the Chicago river, right in the bend of the river.

Q. How much east of the Fort would a line pass, drawn north and south from your father's house?

Objected to by Judge Higgins, as irrelevant. Objection overruled.

Q. State, Mr. Kinzie? A. Old Fort Dearborn was about the corner of Michigan Avenue and River street, near the United States' Hospital.

Q. What degree of permanence had the channel of the river as it went around that piece of ground? A. I never knew any change in it, not in that bend. When you got further down, it was very changeable; I suppose the mouth of it, (what we call the mouth of it,) went out somewhere in the neighborhood of Madison street, that is, previous to the time of the erection of the piers. It was pretty straight after it took that bend there. Below the mouth of the river there was a depression in the sand,

and sometimes the water used to run south of the mouth of the river, perhaps a hundred yards, but it was very shallow, not more than a foot, or a foot and a half of water at most. I recollect in the summer, the cattle used to go down there and wade in that shallow water.

Q. What was the range of sight from your father's house in front? A. We could see down the river.

Q. What objects could you see? A. Well, Indian canoes going along to the mouth of the river, or paddling up. Sitting here in the piazza, we could see them until the river discharged into the lake.

Q. Did it remain in that condition substantially? A. I never knew the course of the river, while I was here, to shift there. It did at the mouth of the river. When I was a boy it was three hundred yards or over, where it used to go out in the lake. The main channel, what we called the mouth of the river, was down below Madison street; that used to be sometimes stopped up so that you could walk across dry. The river was very deep all the way down, until you came to that portion of it.

Q. You remained in Chicago from the time that plat was made until 1835? A. No, sir; I left here the 5th of March, 1833, and I didn't return until the 4th of July, the same year, 1833. I was then living at Fort Winnebago. In 1833, I came back here in September, at the time of the Indian treaty. I believe I remained here about a month, and then went to the Wabash, and didn't return until the spring of 1834. From that time I have been here.

Q. Did you occupy this same house? A. No, sir. I then lived at a house where the Galena Freight Depot now stands, near the corner of North Water street and Wolcott street.

Mr. Van Arman.—When did you come back? A. I came back in September, 1833, at time of the Indian treaty, and remained here about a month, and then went to the Wabash treaty there, and then went to Detroit and spent the greatest part of the winter, and returned again in April, 1834.

Q. Down to the fall of 1835, had there been any accretion from the time it was laid out? A. No, sir, I can't say.

Mr. Lincoln.—Can't say whether there was or not? A. No, sir, I can't tell.

Cross-examined by Judge Higgins.

Q. You remember no change in the lake shore from the time of the survey, until the pier was put in? A. No, sir.

Q. Where were you from February, 1833 to August, 1834? A. I was part of the time, at that time, at Fort Winnebago. I arrived here, I believe, about the 10th of February, to lay out Kinzie's Addition, and remained here until the sixth of March. Then I went back to Fort Winnebago, and returned here on the fourth of July, 1833.

Q. How long did you remain here? A. But a few days then, because I went on east.

Q. Where did you stop at that time? A. I believe I stopped at Mark Beaubien's hotel, up at the fork of the river, up where Garrett was, at the junction of the north and south branches.

Q. That is about three-quarters of a mile from the lake? A. Yes.

Q. You had some business here at the time? A. Yes, sir. I came here on business; I was here but a short time; I was then on my way east, to New York, to supply the government with goods.

Q. How many days did you stop? A. I don't recollect. It was a short time.

Q. Had you any occasion to go down to the lake? A. I don't recollect; I was down to our old place.

Q. Was not that some six to eight hundred feet from the lake? A. Yes.

Q. You have no recollection of going to the lake shore at that time? A. I have no recollection of it.

Q. Then you went east? A. Yes, and I returned, I think, in the beginning of September, 1833, and remained about a month.

Q. Where did you stop then? A. Well, sir, we stopped at an old barn over here.

Q. Did you stop at the Forks, or at the old homestead? A. No, sir; I didn't stop at the old homestead. There were a good many people attending the Indian Treaty, and we had a shed to put our goods in.

Q. You had a good deal of business, then? A. Yes, I had my goods: I supplied the government with Indian goods.

Q. Have you any recollection of going down to the lake in 1833? A. I think I did, in vessels that brought my goods in. My business was landing the goods, and storing them in that old building.

Q, Do you remember anything about the lake shore at that time? A. No, sir. I did not notice anything more than I had previously in regard to the make of the shore.

Q. Did you look in reference to it? A. No, sir.

Q. Could you tell in what state the harbor was at that time? A. They were at work on the piers, I think, on the south side.

Q. At what point? A. Near the Fort.

Q. Had they commenced in the channel of the river there? A. I don't recollect whether they had or not. They had commenced a little west of the channel of the river, putting down cribs near the bank.

Q. You had to go by this place in getting to the vessel? A. Yes.

Q. Did you notice the north side? A. There was no channel cut through there. The river was as it used to be. They hadn't

interrupted that old channel at all. The goods were landed in boats, and came round the mouth of the river and came up.

Q. You didn't notice the north shore particularly at that time? A. I had no occasion to notice it.

Q. How long did you remain there? A. About a month.

Q. How long was the Treaty in progress? A. It took about a month. As soon as ever the Treaty was over, I went away and remained away until the following April, 1834.

Q. Did you notice the condition of the shore at that time? A. No, sir, I don't recollect of it.

Q. Can you recollect now what the condition of things was in 1834? A. It was about as usual.

Q. Do you know whether the north or south pier was built? A. No, sir. I know the south pier had been commenced. I think the north pier had not been commenced then.

Q. Did it run out of the old channel or the harbor? A. It ran out of the old channel in April, 1834—that is my recollection.

Q. Do you recollect that very distinctly? A. I think it was in April, 1834—that is my recollection.

Q. What time in April was this? A. In the early part of April I was here.

Q. At that time the river ran out of the old channel according to your best recollection? A. Yes.

Q. Your recollection is distinct? A. Well, when they commenced stopping up the channel, I recollect there was the breadth or a crib, or two. I am not positive whether that was in the Fall or Spring. I want a little reflection about that. [after a pause.] I don't think the channel was open in the Spring, that is April, 1834. It was open in the year 1834. It may have been.

Q. How long did you stay in April? A. I went back for my family in May. In June they came out here. I think I went for my family, I don't know what time in May. I arrived here in April, and went on in June; I went on to Detroit for them.

Q. What time do you say you left? A. I could not say, sometime in the beginning of May. I came here in the early part of April. I must have been here a month.

Q. What was the condition of the work when you came here in June, 1834? A. My impression is that in June, 1834, we came through the channel with the scow loaded. I think so.

Q, Were you down there on the works in April, 1834? A. I don't recollect.

Q. Do you remember whether the north pier was built when you came here in the spring of 1834? A. I think they were at work on it in the spring of 1834.

Q. Were they out any distance? A. That I don't know, I only recollect about the commencement. At least I know they did do some work on the west end of the pier, near the river, or on the shore of the river.

Q. Did they commence on the lake shore? A. I believe they did. I was under the impression that they commenced on the west side, but I have since found it was wharves they made there for their dredging machines. That gave me the impression that they commenced on the end this way.

Q. Were they not built by private parties? A. No, sir, my wharf was the most western private wharf. But there were some piers driven down for some sort of dredging machines.

Q. You can't tell whether they had commenced or not in June, 1834? A. No, sir.

Q. Did you notice it in July? A. I don't recollect. I know they were doing work in 1834.

Q. You really did not take much notice of the north shore? A. Well, I had no object then, to take any notice of it then, but I had when we surveyed Kinzie's Addition; after that I must confess I had not.

Q. Are you a pretty good judge of distances? A. I think I am.

Q. How near do you suppose you could judge of a distance six or seven hundred feet? A. I think I could come within twenty-five or thirty feet of it.

Q. How far do you think the Kinzie house was from the lake shore at this point you measured to? A. I suppose it must have been not far from seven hundred feet from the Kinzie house to the lake.

The Court took a recess of twenty minutes.

Judge Higgins resumes the cross-examination.

Q. You stated that the shore at the north end of Kinzie's Addition, which is Chicago Avenue, half a mile north, was the point furthest east? A. Yes; it appeared so to me, standing down this way.

Q. Now, looking at the map, you see that it is not the case? A. Yes.

Q. Is it not two or three hundred feet further west than the point on North Water street, at which you struck the lake? A. Yes, according to the map.

Q. But your first impression was that it was still further east? A. Yes, but from the survey——

Q. I am asking for your impressions; can you tell in what direction, as regards the compass, the lake shore is at any particular point, without a survey? A. It depends on how I stand looking over it.

Q. Can you recollect any curve or indentation of any given point? A. No more than the general direction of the lake shore; probably I could observe a curve, but not tell you the extent of it.

Q. Do you remember any curve, except the general curve of the lake shore? A. Well, there was a succession of curves

There was a general line of curves; some were longer and some shorter.

Q. Can you recollect where any particular curve was separate from the general curve of the lake? A. No, sir; I recollect these different curves, but put them altogether, you may call them the the general curve of the lake.

Q. Can you recollect any one? A. Yes, sir, there was one curve by the graveyard; I mean the old graveyard.

Q. About where Randolph street is? A. No, sir, on the north side.

Q. How far up was that curve? A. Well, it commenced somewhere a little beyond Chicago Avenue or the water works, for instance, and then run up north; you will see a curve there.

Q. Can you tell where it begins or ends? A. I don't know that I could tell you. I can't tell the particular spot.

Q. Can you recollect any curve from the point where you struck the lake until you struck the sand spit? A. No, sir.

Q. Didn't you swear before that the general direction of the shore was just about in a line to the sand spit? A. Yes, sir.

Q. Didn't you swear that it was a little east of south? A. I believe I did, sir.

Q. Is that your impression now? A. Well, it is about south, sir; it may be a little east of that; but that is the general direction of it.

Q. Is that the direction from the point where you struck the lake shore to the end of the sand spit at Madison street? A. Yes; the sand spit was about south; it was in about a southerly direction.

Q. Did you swear it ran a little east of south on a former trial? A. Yes.

Q. Is that your opinion now? A. I should say it was a little east of south, from my recollection.

Q. You know the land has been worn away on Michigan avenue, since the pier has been erected. How wide was that land that side of the river, and east of Michigan avenue where the Handy house stood? A. I couldn't state what the distance was, because the river was between the Handy house and the spit. That was all Michigan avenue there to the river.

Q. You know the sand spit wore away, and there it wore away a long distance in, several hundred feet? A. It has not worn away Michigan avenue several feet.

Q. How long was the sand spit? A. Well, I considered to be about a third to a half a mile.

Q. Is it not half a mile and over from the point where you struck the lake shore to Madison street? A. Yes, sir, about half a mile; it may be a little more.

Q. [Presenting to the witness the "Map of 1818."] How does

that correspond with your recollection of it in 1833, at the time you made the survey? A. That looks to me straighter.

Q. What is straighter? A. The east line of the sand-spit. I would make this sand-bar narrower here, and wider here, [illustrating.] This shows that the sand-bar is wider below than above.

Q. Your opinion is that the general direction of the shore was a little east of south, and as you swore on the former trial? A. It might be a little east.

Q. What is your opinion now from recollection? A. Well, I have no reason to differ from my opinion then. I should judge it was a little east of south.

Q. And you think it extended a half mile in that direction? A. Yes.

Q. Was there any particular curve or indentation in that shore, that you recollect, from Chicago avenue down? A. No particular one.

Q. You say that when you went through with the surveyor, you looked through the compass at right angles to the line you were surveying, and as near as you could, judging by the eye, you estimated the distance? A. Yes, sir, as we were coming out nearing the lake, surveying the last lots, we did.

Q. You stated on a former trial that you looked between 33 and 34, and between 34 and 35, and estimated that the east line of 35 was about one hundred and fifty feet? A. Yes, sir, that is my opinion.

Q. And you thought the line between 34 and 35 was about three hundred feet, judging by the eye, looking down the line? A. Yes.

Q. And you didn't measure it? A. Yes, it was mere guess work.

Q. You guessed at the line between 33 and 35? A. Yes.

Q. What is your recollection now as to the length of the line between 33 and 34? A. Well, I am not so familiar with that, but I suppose it must be about five hundred feet, possibly it is more.

Q. Which would be your best judgment, now, or that you gave at a former trial? A. I could not say.

Q. You said on the other trial you thought it was six hundred or eight hundred feet from Water street, and the lines between 32 and 33 would strike the lake within four hundred or five hundred yards? A. I don't recollect whether it extends so far.

Q. How long do you say the one between 33 and 34 is? A. I should judge it was not far from six hundred feet.

Q. You said before it was six hundred to eight hundred feet, and the line 32 and 33 next west of it would be four hundred or five hundred yards? A. Yes, I should say about that.

Q. You had no means of judging of these distances except as you turned the compass, and looked down the lake? A. Well, I

only judge so from making an estimate. I never measured it, but I estimated it was so many feet.

Q. You never even stepped it? A. Never. But looking at the distance I concluded it must be so many feet. I didn't estimate that other line at the time. They asked me about what I thought would be the distance, and I stated. But the line between 34 and 35 I could recollect more distinctly than I could between 32 and 33, and 33 and 34. I never made an estimate of them, or even looked through the compass to ascertain how many feet it was; but in coming out to the lake at the last lots, I can recollect about the distance I made out, and what my impression was.

Q. You said you went down to the pier from the north line of the lots, some years ago, when the trial of this cause was in progress, and found the shore; you looked from the northeast corner of 35 down the lake to an object, and then went to the pier in a line with that object? A. Yes.

Q. What object did you take? A. I took the make of the land, sir, and where I thought these pine trees were, that I was speaking of, and looking up and down the lake, I could see by the course of the lake, and I made my calculation from that.

Q. But the course of the lake has changed very much? A. Yes, but I had in my mind the course of the lake at the time the survey was made, not as it was then. And the direction of the land I was looking at had not changed. That is to say, the object down there, about the widow Clark's.—The high land there hadn't changed.

Q. You had in view the pine trees down there? A. Yes.

Q. Which pines had you in view? A. There were only three or four of them there at the time—a cluster of them.

Q. Tell me where they stood? A. I could not tell you where they stood. If I could go down on the lake shore I could tell you exactly where they stood. They are not there now.

Q. How far were the pines that stood there in 1833 from Mrs. Clark's house?

Mr. Wills objected.

WITNESS.—The trees were not on the beach, they were right on the edge of the prairie, right on the bank. There were sand-hills all along there, and among those sand-hills these trees were.

Q. You say there was three, or four of them? A. There were more than that; they were scattered.

Q. What pines do you mean when you say down to the pines? A. I mean those in the neighborhood of Mrs. Clark's.

Q. How far from Mrs. Clark's? A. I could not say—as far as the banks extend. I could not tell which trees, and I don't believe you could get anybody to tell me about the different trees.

Q. You say you sighted down to where the pine trees stood? A. Yes, where I thought they stood.

Judge Morris.—In front of Mrs. Clark's? A. Yes, sir, somewhere there.

Q. You say it was front of Mrs. Clark's house? A. No, sir, I didn't see her house.

Q. What object did you take? A. I took the make of the land.

Q. That has entirely changed? A. No, sir, that has not changed at all.

Q. Hasn't it changed it all the way down here? A. The beach has, but not the bank.

Q. You had no particular pines? A. I had these pines there in her neighborhood.

Q. What pines? A. The pines that were about opposite Mrs. Clark's

Q. Were they east of Mrs. Clark's? A. Yes and a little below.

Q. Were there any there in 1853? A. Yes.

Q. How many? A. I don't know.

Q. Were there any north of Mrs. Clark's house? A. I don't know whether there were any north, they were in that neighborhood anyhow. There were pine trees about a mile and a half below this over here.

Q. But how far north of Mrs. Clark's house did they extend? A. I couldn't say how far north.

Q. Could you tell within a thousand feet how far they extended north of Mrs. Clark's house in 1853? A. I don't think I could tell about that, because I don't exactly know the location of Mrs. Clark's house now.

Q. Didn't you know the location of Mrs. Clark's house, as you know the location of these trees? A. Yes, but you want me to locate the trees, and I can't. But I say there were trees along there.

Q. Could you locate these pines within a thousand feet? A. Yes.

Q. Where would you locate them? A. I would want to go out and locate them; I can't recollect exactly about Mrs. Clark's house; I could go down on the beach and I could tell you about where these trees were; I would go down and tell you it's about here. But to tell you these trees were a thousand feet this side of Mrs. Clark's, I might be mistaken.

Q. Can you, or anybody else, tell a number of years hence, about an object of that kind with any degree of probability? A. I could come pretty near it, because there was no other objects then but these trees to help me.

Q. If you can't describe, or locate them within a thousand feet, how could you fix them? A. If I were to go out on the beach, Judge, so as to have that to assist me in locating these trees, I could tell you a great deal better than I can here; I want some object to locate them.

Q. If you should prove to be mistaken here in having located the end of Chicago Avenue, two hundred or three hundred feet east of where it was, you would not have so much confidence in a location you made a mile and a half south? A. How is that?

Q. If you couldn't locate the lake shore on your own ground in Kinzie's Addition, within three hundred feet, would you be likely to know much about ground a mile and a half south of you in which you had no interest? A. I think I would, from the object I had to judge by; I had these trees to judge by; the other was a curve.

Q. You had made an actual survey of Kinzie's Addition in the winter of 1833? A. Yes, sir.

Q. After that you stated here that the most easterly point of that Addition, was at the northeast corner, and you was mistaken three hundred feet. Now, could you be as accurate in reference to land a mile and a half south of you, and which you did not own and never surveyed? A. I have no doubt but that the survey was correct, only my impression was, that it was further out than it really was.

Q. That shows how easily we are all mistaken? A. Yes.

Q. What object had you in view in locating these trees? A. Well, the make of the land.

Q. How is it that you recognized that as the point? A. I don't know how to explain it to you more than I have.

Q. What points did you look to? A. Well, I viewed the direction as it used to appear to me, and made up my mind from that, that those trees must have been located at a given point.

Q. Where was that point? A. East of Mrs. Clark's.

Q. How far? A. To the edge.

Q. On the present bank of the lake? A. Yes, on the present bank of the lake, because there was a considerable beach along there between that and the bank.

Q. Then if you take a direct line from the northeast corner of lot 35, and go to directly east of Mrs. Clark's house, it will pass thirty feet east of Shapley's pile.

Mr. Wills objected.

WITNESS.—The trees may be a little this side of Mrs. Clark's or below, but they are in that neighborhood.

Q. Would a line run to that point from the northeast corner of lot 35 cut the pier thirty feet from Shapley's pile, or were they within a thousand feet of that point?

Judge Morris objected.

Q. You say you looked to where the pines would stand, and found it crossed the pier thirty feet from Shapley's pile? A. I took that point where I thought the trees were, as my guide, to go from the northeast corner of the Kinzie Addition and over to the water, to this pier. I stepped it off keeping my name on the spot.

Mr. Lincoln.—Permit me to ask, was the point you fixed, on a straight line from the northeast corner of lot 35 on Water street to the trees? A. Yes, sir. It was in a line to a point where the trees were. I think there were no trees there, but I thought where they would be.

Judge Higgins.—Then a line drawn from the northeast corner of 35 across the pier to a point in front of Mrs. Clark's house would cut the pier thirty feet from Shapley's pile? A. I don't know that it was in front of Mrs. Clark's house.

Q. Where was it? A. I don't know. I didn't follow it down to see where it would strike by her house, but it was in that direction. If I could go down on the lake now, I think I could make it out, as near as I did before.

Q. Its over a mile and a half? A. Yes, sir.

Q. How well can you see down there to take an object? A. I can see the land, and my impression of the direction. That is the way I got it. To be sure the shore is altered a great deal by buildings, &c,

Q. Had you ever gone on the lake shore there, and observed the lake from that particular point, to any particular object before? A. No, sir, not to look down particularly; but I know all about the topography of the country. It was familiar to me; and when I came to reflect, and consider how such and such were, or, at least, what objects were down there to judge by, I made up my mind that that was the direction.

Judge Morris.—You had various other objects? A. Those were the most conspicuous.

Mr. Lincoln.—(by permission)—We are trying now, as well as we can, that was once known, but which, by changes, is now unknown: when that point was known, how did you impress it upon your memory, that it lay on a straight line between the northeast corner of Lot 35, in Kinzie's Addition, and these trees? Or, did you ever, while it was known, observe that it was on a straight line between those two points? A. No, sir; I don't know that I did; but my impressions were as the location of these trees; I only judged from that.

Judge Higgins—Were you not better acquainted with the general direction of the sand-spit south, than with those trees a mile and a half below? A. No, sir; I don't think I was. I used to be down there pretty often, and saw them almost every day. I was brought up in sight of them, and they were familiar to me.

Q. There is a very large tree on Chicago avenue, you know, just west of your addition, beyond Market street; how far would that be from the river? A. A cottonwood tree.

Q. No sir; it's an elm tree? A. I think it was one that was cut down not a great while ago.

Q. That tree is about 150 feet west of Market street, on Chicago avenue, standing on the line of the street; how far would that

point to be from the river? A. I couldn't tell; I don't remember the tree.

Q. Take Market street, how far is it from the north branch? A. I don't know; that wouldn't be as familiar to me as this was; that was a forest, when I knew it. The whole of Wolcott's addition—all that country was a complete forest and marsh; and I couldn't judge of that.

Q. How far is State street, down here, from Mrs. Clark's from the lake opposite; but you can estimate that by counting the streets; A. I couldn't say.

Q. You can't remember? A. No, sir.

Q. Can't you give us an approximation? I want to test your means of knowing about the country down there?

Objected to. Objection sustained.

WITNESS—I couldn't state.

Q. Then you state that the lake shore ran to the sand-spit, you thought in a direction a little east of south? A. Yes, sir; full half a mile.

Q. When you surveyed these lots, you didn't think the ground of much value? A. No, sir.

Q. These lots were surveyed as water lots, with a view of having a pier front on the new harbor? A. Yes, sir; whenever these lots struck the pier, that was intended.

Q. You intended them as pier lots? A. Yes.

Q. And sold them as such? A. Yes; those that didn't strike the lake. We didn't intend that this little strip—that little strip that was left—should have a front on the harbor.

Q. That was never treated or numbered as a lot? A. No, sir; it was not noticed at all—that little strip there. We didn't know exactly the direction the piers would run. We had an idea, of course, they would run about in the direction of the river, straight out.

Q. This work had been comtemplated and marked out? A. Nothing more than we understood there was a resolution in Congress to get an appropriation to make a harbor.

Q. But didn't you know that plans had been made of this, and staked out; an estimate made, and application made for an appropriation to open this harbor in the manner proposed? A. No, sir; I did not know it. I don't know whether Howard, when he was here, made a survey of it. I don't believe he did; or that Mr. Post did, in regard to the canal. They are the only ones, I understood, that made a survey in regard to the canal, or new harbor; but I don't know of any particular survey being made, or any estimate.

Q. You swore, on a former occasion, that these were intended as pier lots, and their value was only for their pier fronts? A. I don't know as I did, sir.

Q. Did you as to their value being for a pier front? A. Yes, sir; that is so.

Q. They were surveyed as water lots, and were to extend down to the pier, wherever that was? A. Yes.

Q. They were bought in reference to that by all parties? A. They were bought as water lots.

Q. It was so represented by you, at the time, to the parties? A. Well, I don't know as I represented that lot 35 would run to the pier, when I sold it.

Q. I didn't ask for that lot particularly? A. But you wanted me to say that all these lots were to run to the pier, and I don't say that. Those that were long enough to reach the pier, would reach it.

Q. But they were surveying in reference to the pier. It was done with the understanding that they were to be pier lots? A. Yes, sir; that is so.

Q. You say the last stake was twenty-five feet from the shore? . Yes.

Q Was it not twenty-four feet by measurement? A. I don't know.

Q. Mr. Snow swore he measured it? A. I don't recollect that.

Q. Why didn't you ascertain how far the line of the lake shore was from the Shapley's pile; whether thirty or forty feet? A. I merely located it, and judged it was within so many feet. I did not go there with the intention of measuring it? I merely wanted to see how far the lake shore was from that pile.

Q. You don't know exactly where you started from, do you? A. Yes.

Q. How many feet was it from the north-east corner of 35? A. Twenty-five feet east of that corner.

Q. Who went with you? A. I don't think anybody went with me.

Q. At whose request did you go? A. I am not positive; but I think Mr. Arnold. Some persons told me to be sure and get as near correct as I could.

Direct examination resumed by Mr. Arnold.

Q. Don't you remember that you stated on your examination, that you believed you could go to the point where the lake shore formerly was, and that thereupon we requested you to go down by yourself? A. Yes, sir, I did go by myself.

Q. Was it not under such circumstances that you went down to see how near you could come to the old lake shore? A. I believe so.

Q. And you went there and came within thirty or forty feet of this Shapley pile? A. Yes.

Q. You have lived on the frontiers, and among the Indians all

your life, and have been accustomed to judge of distances and localities?

Objected to and argued by counsel.

COURT.—I think he has been examined fully in relation to this matter, but you may ask as to his ability to judge of distances.

Q. How is it you come to be so confident of that particular locality? A. Because I have been familiar with it; that is the reason. I was familiar with the country round here and could tell.

Q. You were asked if you sold these lots as pier lots? A. We sold them as water lots.

Q. Were lots 34 and 35 regarded by you at the time as not lots on the pier, because they abutted on the lake? A. I never had any idea they would abut on the pier.

Q. Why not? A. Because they run into the lake.

Q. That was the observation you made at the time? A. Yes. I don't know about 34, but I thought 35, the last lot, would certainly run into the water before it would strike where the pier would be. I could not say about the location of the pier, because I did not know how it would be located.

Q. You then expected the pier to go further north than it did go? A. I did.

Mr. Wills.—Did you sell lot 35 to Mr. McGregor?

Objected to.

Mr. Wills stated that was asked in connection with a note from Mr. Gregor to Kinzie in payment of the lot. He desired to offer it now instead of offering it as rebutting.

Second cross examination by Judge Higgins.

Q. You said you expected the pier to go considerably north of where it is now? A. Not considerably? but I expected it to go north of where it runs. I thought it would go a more northeast course.

Q. Didn't you tell the Surveyor in surveying North Water street to make it in such a position that it would be about parallel with where the pier would be? A. I don't recollect that. That was made in reference to other lots by the river, as well as those below.

Q. What other lots? A. The object of running the street that way was to get some lots along here [illustrating by the map.] You see it only left our shorter lots about twenty feet deep—the ones we built on, lots 20 and 21.

Q. How far north of the place where it was built, did you expect the pier to be built? A. I expected it to be this much [illustrating] in the same direction that street is.

Q. From what point? A. From the place where it started.

Q. That would have made the lots about 150 feet deep all the way? A. I don't know.

Q. Was not that spoken of between you and Mr. Snow? A. I don't recollect.

Q. Was not that to run to the pier? A. Yes, all these that are numbered, except this.

Q. Of course, not 36? A. But not 35.

Q. Didn't you swear on a former trial, that you sold it by its having a pier front? A. No, sir.

Q. The west line of 34 might have run to the pier? A. Yes.

Q. Did you testify thus: "I testified at the last trial that the pier was not contemplated at the time of the survey. I have had reason to change my mind since; this plat was laid out in reference to the pier, and we called them water lots, in consequence of the pier that was contemplated."

Q. Is that what you swore to? A. Yes, sir, we called them water lots, and we called the others water lots on the river.

Q. And you called them "water lots in reference to the pier?" Did you swear "Major Hunter refreshed my recollection on this. Before I didn't recollect the pier was contemplated at the time of the survey; I counted the water lots, and we numbered them as we went along; these lots have always been known as water lots and sold as water lots; these were always considered water lots with reference to the pier?" A. We called them water lots because they were water lots; if the pier ran along them, that was to be the front lot.

Q. Did you call them water lots in consequence of the pier that was contemplated? A. That might have been.

Q. Did you state that you didn't recollect that the pier was contemplated? A. On the first trial, I did.

Q. On the first trial you swore you didn't recollect that any pier was contemplated, and afterwards Major Hunter refreshed your recollection? A. Yes.

Q. You have been sworn two or three times on this cause? A. Yes, three times.

Q. Did you state "I have no measurement to guide me now, as to where the lake shore was, but merely general recollection; I get an idea by looking up and down the lake shore, of where the shore was at the time of the survey; there are some pine scrub trees near Mrs. Clark's; it is from general recollection that I get an idea of the lake shore as it was; I never measured it." Did you make that statement on the former trial? A. Yes, sir.

Mr. Arnold now formally offered in evidence the "Original Map" of Kinzie's addition to Chicago, of north fraction of section 10, T. 39, N. R. 14, E. 3 P. M., with a certificate thereon of its being a true map, by Jeddiah Wooley, Jr., County Surveyor, of Cook county; also the certificate of Richard J. Hamilton, Recorder of Cook county, that it was left for record, February 22d, 1833, and recorded January 18th, 1834, in book A, pages 311 and 312; t gether with the acknowledgement by Robert A. Kin-

zie, February 22d, 1833; the signiture of Col. Hamilton being admitted.

Defendants objected. Objection overruled, and defendant's counsel excepted.

Mr. Arnold proposed to read the minutes of the evidence of John C. Calhoun, since deceased, given at the former trial.

Judge Higgins said they would agree to it if the plaintiffs would consent to allow the evidence of the witnesses Maxwell and McGregor, also deceased, to be read in like manner. Agreed to.

JOHN C. CALHOUN'S testimony, as taken down at the former trial and preserved in the bill of exceptions, was now read to the jury by Mr. Arnold:

J. C. CALHOUN, called by plaintiff, testified: I came here in October 1833, and have resided here since, most of the time on State street. I am a printer; issued the first number of the Chicago Democrat in 1833. My attention has been directed to the pier by my position as editor, and interest in improvement of the city. I do not know when the north pier was commenced; Lieut. Allen was in charge of it. I have frequenty noticed the make of the lake shore. The south pier across river was built before I came to Chicago; the north pier was commenced next year, in August or September, I think. Major Handy was in charge, and Jim Allen. Can tell where the river was. Where river had formerly run water always stood, for ten or twelve years after pier was constructed; worked through; I saved a boy's life there once. Water hugged south pier; never formed sand there. Dredge has always worked on north pier. The timber upon which puncheons were placed to keep back water, are timbers lying lengthwise. The water tipped the cribs. There was a hole in the original bed of the river where I rescued the boy; there is near there piles now; this hole was about a rod south of the three piles, and a little east of centre pile. About the place. Nothing on which I fix my mind in the way of monuments; nothing but angle of pier to govern my recollection. The angle of pier is the water's edge, the lake shore at the time of building; will not vary ten feet. The piles east are driven on east of this angle, but none on west, except on one side. A floating pile-driver was used to drive piles; it was not on a scow, as Mr. Kinzie said; but a pile driver only. The three piles were driven about two or three years after pier was made, I think. Eddy or hole was to be seen up to eight or ten years last past. Hard matter to put crowbar into sand under river. I put crowbar down to find timbers, but found none; no doubt in my mind. Was on north shore last year. I locate north shore near Shapley pile. I went over with Shapley. Where I have always located lake shore is near Shapley's pile, *not ten feet from it.* Never was much on north side; never went to make observations. There are two angles in north pier, besides one opposite Kinzie's ware-

house. Have not been on north side in a year or more; have not been on south pier with reference to this line. Can't drive piles as well in sand as in clay; same blow would drive pile through clay four to two in sand; to drive pile five feet in sand would require sixteen hundred pounds weight; with a hand driver can't drive piles through sand. Piles are twelve inches square on south pier. An iron ring was always put on government piles, and the mark is there. I saw horse power used on piles on pier, but no other kind of pier.

Cross-examined.—I was here when south pier was made, except part through river. The work in river was crooked and the crib and the work on top of south pier was put on straight; the projection of crib is the most certain proof I have. The west end of puncheons is the east bank of the river; I refer to puncheons spoken of before, to be seen a year or two ago. I made examination there with crowbar; I went down about two feet. The crib was fastened on one timber, I found; the top timber is about a foot wide; on the opposite side I could not reach bottom. Water is eight or nine feet deep; the crowbar was two feet in sand and two in water on inside. I put rod down between timbers of pier; can tell by the bar between stone and wood and gravel; I pushed it with hand; my instrument was not very good; could have told better with a better instrument. My pay was not good enough to make much effort. The bar went out 15th February, 1834. The channel would be narrower or spread out when winds blew from north or south; the lake shore washed away forty feet west of the original shore after river went out; it might be more or less; I never measured it. I was down on north pier not once a month; had no business to call me there. After pier was built, recollect storm broke through west of crib; don't know how far they were out; they might have been out four or five hundred feet to lake; it made sad work, and carried sand into the river. They built pier west from that point. This sweeping into river was back of work on pier, from lake through to river. The crib when put in was shoved on to shore as fast as possible, or they may have put in two; after the cribs were put in, they had to be all leveled up, commencing on or from lake shore; all were sunk, and then leveled up after they got above water.

Re-examination direct.—The cribs on north side were all leveled up after they got above water; some of the cribs might have tipped one way, some another. I used to fish on shore with Graves, Sherman, and my brother. The lake shore was near Shapley pile, as I remember; I think Shapley pile is about ten feet west. I think old line of shore was to the west of two sticks, on or near shanty; I think lake shore run nearly parallel to present line of shore, excepting out the accretion at present near and about that pier. Would not undertake to fix the line of lake shore now; must look again; should have to get up on building

and look over; there were no buildings there in earlier days. Allen's map shown, dated 31st September, 1836, is pretty near correct. Little of bar was left in 1833. I always refer back to angle in pier to refresh my recollection as to lines and distances there; line of shore is pretty nearly correct, according to my idea. Fort and buildings. The puncheons in bottom of angle on south pier guide my recollection better than anything else; on north side the water undermined the south pier, and part of puncheons turned partly over, and I walked across in 1834. Those puncheons are still there.

Cross-examination.—The general direction of lake shore was about north and south, and is about and marked on map; running south of mouth of pier; the shore then inclined a little to the west.

JOHN C. CALHOUN, recalled by plaintiff, testified. I can't tell when Capt. Allen left; he was here four years, he came in 1834.

JOHN C. CALHOUN, recalled by plaintiff, testified: There is a projecting piece of timber in south pier in river, near where I locate west side of sand-bar; east side of river; cannot tell what that timber is. There are some timbers out of place; that is where gap was left open in old river, which was where I had often passed. Piles are driven on both sides; the gap was filled up by crib-work.

Cross-examined.—Was in Arnold's office; was examined. Mr. Johnston has given me a cane.

Captain Johnston.—Kinzie house was north-east of fort; house and tree was in range of river.

Cross-examined.—Was at Arnold's office; was interrogated by Johnston. The turn of river was east of house.

Mr. Wills proceeded to read to the jury a series of extracts from the official reports of Lieut. Allen and Maj. Turnbull, previously offered and admitted. (See page 3.)

Mr. Wills also offered in evidence the maps connected with the above mentioned reports; and first the maps connected with the reports of 1837 and '38 by Lieut. Allen. (Ex. C. D.)

Judge Higgins objected. Objection overruled; defendant's counsel excepted.

After further discussion in relation to the remainder of the maps, Mr. Arnold said the plaintiff's counsel would reserve them and tell the opposite counsel, Monday morning, what maps they would offer.

Court adjourned until half-past nine o'clock, Monday morning.

Third Day—Monday, March 26, 1860.

Court met at forty-five minutes past nine o'clock, and the jury being called, the trial proceeded:

WILLIAM H. BUSHNELL, called by the plaintiff, being duly sworn, was examined in chief by Mr. Arnold, and testified as follows:

Q. What is your occupation? A. I am a surveyor and draftsman.

Q. How long have you followed that business? A. I have followed it in Chicago between sixteen and eighteen years; I can't tell exactly. I came here eighteen years ago.

Q. You have surveyed various portions of the city? A. Yes, sir, I have.

Q. Have you surveyed any portion of Kinzie's Addition? A. I have.

Q. Have you made plats of the entire Addition? A. Yes, sir, I have made several, I think.

Q. Do you remember when you made the first? A. I can't tell, sir; its a good many years ago. I think the first map I made of Kinzie's Addition, I made for William B. Ogden, in whose employ I was then. I made it from a copy furnished me, I think.

Q. [Presenting original map.] Look at that map, and see whether you ever made a copy of it? A. I made a copy of this map for my map of Chicago, which I published in 1847. I published a map of the entire city, in 1847, as it then was. In getting Kinzie's Addition, I made it from this, with one exception; and by the way, I should say that I was assisted in that by Mr. Bradley, who was then City Surveyor, Charles B. Farwell, County Clerk, and who also was City Surveyor; and we found a discrepancy between the original and recorded maps of Kinzie's Addition; and I put on both lines; and on my published map they were marked, one as the original line, and the other as the recorded line. Mr. Farwell and I talked the matter over. I don't know whether Mr. Bradley was there at the time or not.

Q. Was this map then in the Recorder's office? A. I can't remember.

Q. Do you remember at what stage of making the map of Chicago you discovered the discrepancy? A. It was when I came to put in the lake line, sir.

Q. In your surveys prior to that time, had you ever been aware of that discrepancy? A. I had not, because I had never surveyed in that portion of Kinzie's Addition.

Q. You were not aware of it? A. No, sir.

Q. Was any body else aware of it, to your knowledge? Objected to.

Witness.—I, of course, surveyed them, in connection with other surveyors. What they knew, I could not say.

Q. Had you ever heard of any discrepancy? A. I never had heard of it.

Judge Morris.—Have you any of your maps here? A. One in the Recorder's office; that is the nearest place, I know, sir.

Q. In making your map, had you any conversation with Mr. Jones about that discrepancy? A. I had a conversation with Mr. Jones about it. He said I was wrong. That's the time Mr. Farwell and I consulted about it. He seemed quite anxious I should leave off one of the lines—the one marked as the original line. He wanted me to leave that off of my map. He spoke, if I recollect the conversation, which was a great many years ago, and said it would affect his interest. I told him my act was not official, but merely the act of a private individual, and not evidence in a court, or anything of the kind. He seemed to be very anxious that I should leave off that line. I refused, wishing to make a correct map of the city. Mr. Jones then offered to make it an object for me to leave it off.

Q. What did he say? A. I can't tell the words, for it is entirely out of my memory now—not entirely, but the minutiæ are. He offered me money at all events, to leave that line off. I can't say positively, but my recollection is that he offered me $100 if I would leave it off, and I refused. He then said he would injure the sale of my map if I refused, and I think, subsequently, he did do so. I know he never subscribed for one at all events.

Q. Did this conversation take place in the presence of Mr. Farwell? A. No, sir; no one was present but Mr. Jones and myself.

Mr. Lincoln said Mr. Jones and Judge Higgins were not present; and he asked that the witness might stand aside, subject to recall for cross-examination if desired. Agreed to.

Asa F. Bradley, called by the plaintiff, being duly sworn, was examined in chief by Mr. Arnold, and testified as follows:

Q. How long have you resided in Chicago? A. Since June, 1836.

Q. What is your occupation? A. Surveying.

Q. Have you followed that business since you resided in Chicago? A. Yes, sir, steadily, down to the fall of 1849, when I was absent three years.

Q. You have been city and county surveyor several times? A. Yes, sir; I held the office fourteen years—city and county together.

Q. [Presenting the original map.] Look at that map and state if you have seen it? A. I have seen this map before. I always recognized it as the original map of Kinzie's Addition.

I have seen it in the Recorder's office, in looking at the old maps there.

Q. Have you ever made a copy of it? A. Yes, sir; I think I made a copy of it in 1849. I say I made it; my assistant or draftsman made it under my direction; that's Mr. Thompson.

Q. [Presenting "Thompson's copy."] (Ex. "B.") A. Yes, sir; that is the map. That was made in my office. I don't see the date of it; it must have been 1849. We aimed to make it a perfect copy of the original map, which I believe this is.

Mr. Lincoln—In 1849; then it was made about the time this suit was brought? A. I think it was made about that time; it was made in reference to a suit pending at that time.

Mr. Arnold—It is marked 1847? A. I think it must have been later than that; it might have been 1848. Mr. Thompson was with me three or four years.

Judge Morris—Didn't Mr. Thompson make a copy on the record for the Recorder at the same time? A. Yes; he prepared a copy to go on the files of the record, which, I believe, was subsequently introduced into the record as a part of the record. I believe it was at the same time.

Q. The back of the original map shows that it was recorded in 1847? A. Yes; it must have been at that time. Mr. Thompson was in my employ that year. I had nothing to call it to my mind exactly. I resigned in 1849.

Q. [Presenting another map.] There is one made in the same year, I suppose? A. I recognize that as a map made from a survey by Mr. Thompson and myself, conjointly, about the same time, during that year, I think; there was no date upon it.

Q. You made it from actual survey? A. Yes, with Mr. Thompson, about the same time; it was made preparatory to a suit then pending; do not recollect the year.

Q. It was made in reference to a lease of property? A. Yes, something of that kind.

Q. By whom was you employed to make this survey? A. I think by Mr. Johnson, personally; it might have been his agent, Mr. Rees; it was paid for by Mr. Johnson.

Q. Do you remember what the object was? A. I do not particularly. It was a long time since the map was made; it was made like other business maps in the office.

Q. Do you remember whether that map was copied in 1847, or not? A. It might have been made before, or subsequently; I can't state whether it was made in connection with that record, or not.

Q. Where would the line between these lots, 34 and 35, strike the pier from actual survey? A. The map sets forth all I can say about it; it sets forth four hundred and twenty-seven and a half feet as the length of the line between 34 and 35, from the south side of Water street, to the north edge of the pier.

Q. What is the distance on the line between 33 and 34? A. That would be something less; but the distance is not measured; neither of these other lots are; I can get it substantially from the scale.

Q. How far down would the dividing line, between 34 and 35, strike the lake shore on that plat? A. [After measuring.] It is three hundred and ten feet.

Q. What is the length of the line between 34 and 35? A. It is four hundred and twenty-seven and a half feet from the south line of Water street to the north side of the pier; that line would strike the shore a distance of over three hundred feet from North Water street, according to the original map.

Mr. Lincoln.—Your survey has nothing to do with that? A. No, sir.

Q. Where would the east line of 35 strike the water? A. It is one hundred and forty feet to the water line of 35. The scale on this map is two hundred feet to the inch, or nearly that.

Q. Do you know where Shapley's pile is? A. No, sir, I don't.

Q. Has it been pointed out to you? A. No, sir, if it has, it has escaped my recollection.

The witness was dismissed, having been called to occupy the time while waiting for Mr. Shapley, with the understanding that he would be recalled for further examination by the plaintiff, when the defence might cross-examine him upon all his evidence.

MORGAN SHAPLEY, called by the plaintiff, being duly sworn, was examined in chief by Mr. Arnold, and testified as follows:

Q. We have been waiting for you half or three quarters of an hour—where have you been during that time? A. I was called down here to see some men.

Q. When did you come to Chicago? A. June, 1833; on the 29th, I think it was.

Q. What business had you engaged in? A. In the harbor work on the Chicago piers.

Q. When and where were they commenced? A. On the south side of the river, at the Garrison, in the summer of 1833. In the summer we commenced at about the centre of the Garrison gate, and run over this to the lake shore, across the river beach, and across the river, and across the sand-bar to the lake shore. Nothing was done on the north side that year. We commenced work on the north side in 1834.

Q. Were you present when the first crib was put into the pier? A. Yes, sir, I helped put it out there.

Q. What time did you begin? Q. I think it was some time late in the season; in August, 1834.

Q. Who were at work with you? A. Jacob Miller and Smith; I don't know that Smith was there; Miller was there, and I guess a man named Delano.

Q. Was Sadlier? A. I rather think he was not. There are four or five of the lot that was there, who are dead now.

Q. How was that first crib framed? A. It was framed regularly with sticks laid longitudinally down, and sticks cross ways; sticks of timber framed together. The cross timbers that we term tithes, were formed with tenants on the end, and the side sticks were square; they were thirty or forty feet long.

Q. What did you do with them after they were framed? A. I put them down upon the line of the work, as it used to be.

Q. How did you get the first crib to its position? A. We took it around out in the creek like, and hauled it up on the beach; we floated it around, and hauled it up on the beach forward, so that part of it lay on the shore, and part in the water; the west end of it laid on the sand; we shovelled the sand out, and got it as near level as we could, and the outer end lay in the water.

Q. Did you make any excavation for it? A. Yes, sir.

THE COURT.—Was it in the lake, or the creek? A. In the water of the lake, on the east side of the shore; the west end lay on the shore, and the east end in the water.

Q. Do you know where it is now? A. I don't know as I could tell, without trouble; the piers have been rebuilt around there; I could find in that neighborhood.

Q. It was placed there on the lake shore first in 1834? A. Yes, sir.

Q. Were there any piles driven in that crib? A. There was none driven in the first crib, that was the north side of the pier; there was two driven on the south side of the first crib.

Q. Do you know a particular pile, which was driven on the north pier, which has been known for some years as Shapley's pile? A. Yes, sir; that was the first pile that was driven in the second crib on the north side of the north pier.

Q. What sort of a pile was it? A. It was a pretty square stick of timber, from twenty-five to thirty feet long. When we commenced driving it, we used to drive them as far as they would drive without splitting, with a band on. Sometimes one stick would be stronger than another, and would drive further without bursting or splitting, than others would.

Q. What sort of a band? A. It was an iron band on the top of it, about two inches broad, and an inch thick. There were two piles of this kind driven on the north side of that crib, and three on the other, or south side. It was driven near the west end, or about in the middle of that crib. It was in the middle of the second crib.

Q. How was it driven? A. We partially built a machine in 1833, to drive piles—a pile-driver. We commenced in 1833, and in 1834 we finished it. It was a machine that was four feet, I think, at the sides, twenty-four feet wide, and forty to fifty feet long—a floating pile-driver. The gin on it was forty-four feet

long, with the hammer on it that went up and down. That, I think, was forty-four feet high. The hammer was of cast iron, and weighed two thousand and two hundred pounds. I think it was hoisted by four horses, that raised it up forty-four feet, and let it fall on the top of piles.

Q. Where was the pile driver placed, in driving this pile? A. It was fetched around on the north side of the pier, and got up ashore as far as we could get it, without pulling it out of water. We pulled it up by hand, in order to get as many piles in as we could, nigh the shore. The machine drew sixteen to twenty inches of water. We had to have it standing level, to use it, or it was ajar, and would split the piles, unless it was standing level. We hauled it up as far as it would readily float, to put the pile in that pier. When the pile was driven, the pile driver stood on the north side, in the lake, close up to the beach, facing to the south, towards the river, as it is now.

Q. How far west of the pile would the pile driver extend, so as to touch the sand where this pile was driven? A. It was about twelve feet to the edge of the machine; it was twenty-four feet wide; it drew sixteen to twenty inches.

Q. How far was the actual water line, or shore, west of where this pile was? A. I think it was about twenty-two feet from Shapley's pile to the lake shore.

Q. You have often seen Denton's Map? A. Yes, sir.

Q. You pointed out that pile to Denton at the time he made the map? A. Yes; I went to show him the pile. At that time the piles were all in sight. It was rotting then; but it had not been torn away any or rebuilt.

Judge Higgins.—Did you see this on the map when Denton made it? A. I saw it at the other suits.

Q. Was not Denton dead? A. No, sir, he was a witness. I saw it after the map was made, and after I showed him the pile.

Q. [Presenting Denton's map.] (Ex. E.) On which of these lots is Shapley's pile? A. This pile is on lot 33 as laid down.

Q. How far from the west line of 34? A. I should say twenty or thirty feet.

Q. Then when that pile was driven about twenty feet west of the line of 34, the waters extended west from it about twenty or twenty-two feet? A. Yes, sir, I think so.

Q. That was in August, 1834? A. Yes, sir.

Q. When Denton made this survey, was the pier in such a condition that you could find these piles? A. You could find all the piles from the first one on it clear to the end of the pier—all the piles that were in the pier on both sides of the pier from Shapley's pile clean out east,

Q. How far apart were they? A. Ten feet apart. They stood in the water from four to six feet—some of them a little more than that when we cut them down. The order was to have them

above the surface of the water, and we used to calculate to drive them down and cut them off—cut off what was bruised and they would be sound.

Q. You did not finish them to that height at first? A. No, sir, we put the crib on a foot or so out of water, so we could walk around for our own convenience.

Q. From Shapley's pile east all the piles were driven by their machine? A. Yes, I guess every one, maybe a very few were not.

Q. You say two piles were driven on the south side, too? A. Yes, sir, two on the side of this pier; they were to be seen then. All the piles that were to be seen were a foot or two out of water at the time this map was made, and some of them were rotted down to the water nearly, and some of them were not rotted at all. Some of them were so that the top was all you could see.

Q. Why did you not put cribs west of Shapley's pile? A. Because the machine could not float any farther. When we got that far, the machine was hard aground, and we could not get it any farther. Our piles were ten feet apart, and we could not get it ten feet, and had to leave it there. They can be made so as to drive farther, but in this machine the gin stands in the centre, and the stick between this machine and the pile was a foot stick, and the sticks the gin stood on projected over on the top of this, to fetch the gin outside o. the floating machine, so that it would strike the pile fair; so that it was a foot between them. [Indistinctly heard.]

Q. You had no means of lapping over? A. No, sir; the gin probably, as a general thing, was calculated to stand so. [Illustrating his meaning by gestures.]

Q. Is there an angle or bend in the north pier at the place where the first crib was put in? A. Right where we put the first crib down in 1834 is the angle of the pier. The lake shore was right there at that angle at the time.

Q. What was the construction of the pier from this point? A. The construction of the pier was all alike invariable from that point. It was all built in the same mode, only they vary in lengths. The piles were ten feet apart, invariably all the way through, but in shore there was nothing done until about 1836, I guess, and when it was commenced westerly, it was dredged out. We built a dredging machine in 1836, and dredged this sand-bar and put stone piers in. That was on the north pier, west of the commencement in shore.

Q. When you went with Denton to point out Shapley's pile, was the manner of constructing these two kinds of work obviously to be seen? A. It was to be seen in those days.

Q. In the manner you have described? A. Yes.

Q. West of that place, where the old lake shore was, you say you excavated it and dredged it, and built afterwards? A. Yes.

Q. Were any piles driven there? A. Yes; I think there was, but not immediately here, and along up the creek, that was built of crib work, the same as the other, and filled in with stone.

Q. How did it differ from that, east? A. Nothing, but one had piles and the other had not, that was all. The superstructure work was all the same, only there were no piles along there on nary side. On the north side of the pier there was very little water. All along west of the lake shore, where we built the dredging machine, we took that in and dredged the sand there. We dredged it some seven or eight feet in front. Here [illustrating by the map] and there we built cribs in, so that when they came up to the surface of the water they would stand level. We built the inside pier faster than the outside; we built it with shorter timber in that way until we got up in the neighborhood of the surface. We put the timbers in here longitudinally. [Illustrating by the map.]

Q. During the years 1834–'35, after the first and second cribs were put in, have you known the water to run in behind those two cribs? A. At heavy blows from the north and east, the water used to set over all along the beach here, and run along the west end of the first crib; when the sea rushed up it would run over in there.

Q. What did you do to stop it? A. We put a narrow crib in back of the first crib; it stood off in this shape, [illustrating.]

Q. Where did you put that? A. I think it was here, a little west of the angle; it was next west of the first crib; it was close, fifteen or twenty feet from the first crib, in the neighborhood there.

Q. How long did that little work extend north? A. I guess the sticks were twenty-five or 30 feet long; it was a temporary fix, and a few stones put on so that the swash of the water would not carry them sticks away; so that it would not lift and float it away; there was stone enough to hold it. I think that was put in long after we quit; the work commenced in 1834.

Q. Do you recollect any particular storm that injured that portion of the north pier? A. We had very still weather in 1834–5 for lake shore work, as we termed it; that is, outside work. It was still until along in the fall in 1835, when we had more boisterous weather. We run out the work pretty fast; in 1836 it was very severe; in 1835 we had little blows, and it ran over considerably at times, but not to effect any of our work.

Q. Do you remember in the fall of 1835, one of these severe storms blowing over there, and blowing sand into the river, so that you had to dredge it out again? A. It run it over more or less; I think we got it fixed about that time, and a very little water that would come over the beach would run into the river at all.

Q. You spoke of putting in an L north of the first crib, and

about the position where the old lake shore was in 1834? A. Yes.

Q. Up to October, 1835, state whether there was any accretion there; and if so, how much? A. Well, there was very little for those two or three years. There might have been twenty or thirty feet somewhere there. I don't think there was more than thirty feet, if there was that. There might possibly, have been more those years. It made very slow the first three or four years; you could see it making, I think, on shore.

Q. Do you remember its continuing to wash around there? A. Yes, sir, it used to wash over there almost every blow, until we put the crib on there, because this pier was only a foot or so out of water.

Mr. Wills.—The L was? A. The pier itself. We generally calculated to have it about a foot out of water, so that if it settled, we could get the level as low down as we wanted. If it had been higher, the seas would not have run over it so much. When the sea was heavy enough to run over a foot, it run over there, but when it was—— [remainder of sentence inaudible] where it backed the water up it would not run over but retain it.

Q. How far in your judgment, had the shore extended east from Shapley's pile in October, 1835? A. I do not think as I stated before, that there was over thirty feet from that pile east, in 1835, but there might have been more, possibly.

Q. Where was the shore in 1834, when you began? A. Twenty-two feet west of Shapley's pile.

Judge Higgins.—Did you fix that at the date of the deed, October, 1835? A. I say in the fall of 1835, I think it was thirty feet.

Q. Where was the lake shore when you put down the first crib? A. It was about twenty-two feet to the lake shore west from the Shapley pile, that was in August 1834.

Q. In October, 1835, where was the lake shore? A. The lake shore might have been out some thirty-five feet further east than it was in 1834, that would bring it a little east of this pile, perhaps.

Q. From August, 1834, till October, 1835, how familiar were you with that locality? A. Well, all the still weather after we commenced this pier in 1834, our business was to run the cribs out as many as we could; sometimes we put in two cribs a day. We used to have the men cutting the timber, right on land, and when it was still, put it up.

Q. Where did you board? A. We had a large house we termed a mess house.

Q. How far was it from where you were at work? A. Some four or five hundred feet, may be more. It was on the north side of the river, a little east and south of Kinzie's house, and a little nigher the river.

Q. On going to your work, would you pass these piles? A. We would go right down there to our work every day; down there right past it, that is, when our work called us outside, that was almost every day, sometimes twenty times a day we passed back and forth to get the timber.

Q. You have been examined several times in regard to this matter? A. Yes, sir, on the former trial.

Q. Did some of the witnesses differ from you in the account of that first crib and its location? A. Yes, sir, materially, or rather, they stated that it was driven with a hand pile-driver; I could not say that that was the testimony, but I heard it talked of.

Q. Did any of the witnesses, who differed with you and Mr. Jones, go down and pull up that pile to see what sort of a pile it was? A. Yes, sir, during the other trial, one of these piles was pulled up under Mr. Jones' direction. I seen it during the pulling up and afterwards

Mr. Lincoln.—Was that Shapley's pile? A. No, sir, one a little east of it.

Q. Was it in that same crib? A. No, sir, I think it was still further east than that crib. I guess it was the third or fourth crib from the first one—in the neighborhood of one hundered feet from the first one—may be a little over one hundred feet.

Q. Why was it pulled up? A. I don't know as I could tell.

Judge Higgins.—Do you know the reason Mr. Jones had it pulled up? A. I can't say.

Q. Was it because they were in dispute about one; you saying it was one and they another; and you went and pointed it out and found it? A. Yes, I know they pulled it up, but when, I can't say. They pulled it up with a big chain—an inch chain, I think, fixed around the pile. They set the jackscrews they raise houses and move buildings with, and screwed it up. When they got it up it was a square stick, I think, nineteen feet from the surface.

Judge Higgins.—Mr. Jones says it was the Shapley pile that was pulled up? A. I contend that it was not; he may prove, however, that it was. It was nineteen feet in the ground. I measured it myself after it was pulled up.

Q. With what decree of certainty can you speak of that lake shore in '34 and '35? A. The commencing at that angle and our working at the pier was ———

Judge Morris.—Can't you be mistaken? A. I cannot. There is no possible way in which a man can be mistaken that worked there. I am as positive as that I am here. The reason I am positive is because I was at work there, and helped to do all that work. I was there at the time the piers was commenced in the summer of 1833, and I helped put down every pier of both piers to this day, except ninety feet. I first went to work under Superintendent Bender, and I worked under him that year, and the next spring,

under Capt. Allen, after he took it, and since that, I have been backwards and forth on it. When Capt. Allen left, I still remained the next season under Lieut. Leavenworth, in 1859, and since then, under Capt. Webster and the different superintendents that have been there since. That summer I put in a protection to the light-house. I helped finish it up. We got it done along late in the year.

Q. You worked also on the pier? A. Yes, sir.

Q. [Presenting Denton's Map, Ex. E.] Where did you commence the south pier? A. Very near the Garrison enclosure—the north gate of that enclosure—and run it from the commencement there over to the lake shore in '33.

Q. Is there any point in the south pier that indicates the place where the east line of the sand-bar was when the pier was built? A. An angle in the south pier. When we got this pier built across the river and the sand-bar, it stopped in 1833, and the superintendent and a great many other folks, vessel captains, thought it would be advisable to cant the pier to the north, in order that it would be easy for vessels to enter when a northeast wind was blowing heavy; and the government officer asked permission of the government to let him cant it further north. Then it was on this straight line. He got it from the government, I suppose. There is an angle in the south pier the same as that. [In the north pier.]

Q. Where is that angle? A. Right where the lake shore was.

Judge Morris.—Are you positive? A. Yes, sir, I am as positive of it as that I am here.

Q. Do you find piles driven on both sides of that pier east? A. I find them on both sides east, ten feet apart, just the same as the north pier—that is to the east side of the old sand bar. After that there was no piles driven along in there on either side of it. Across the sand-bar in the beginning there was not.

Q. Are there any now on the south side of the south pier, across the sand-bar? A. Not without they have been put in since we have finished the work. They have been tearing away and building new docks. There were none when this map was made. When you get across the sand-bar, we put piles into the crib. There were no piles in it, but we drove some in '34 along outside the crib, on both sides of the pier.

Q. Where was the bed of the river in 1834? A. The mouth, or the channel of the river was somewhere along in here, west of the sand-bar.

Q. What was the width of the sand-bar? A. About 230 or 250 feet.

Q. What was the width of the river? A. About 300 to 400 feet; I think from where it commenced out at the sand-bar, from the inner shore to the sand-bar, it was 300 to 400 feet—yes, in the neighborhood of 500 feet from where we commenced to where we

come to the sand-bar; it was over 400 feet; it was about 700 feet to the east side.

Q. When you made this map, did you find the two angles to the north and south piers? A. Yes, sir, they were plain.

Q. Where was the shore? A. The shore was right along almost parallell with these two angles.

Q. Do you mean that these points indicate the west shore? A. Yes, sir, at that time it was about thus.

Mr. WILLS proposed to examine the witness on one point, but Court objecting, Mr. Arnold proceeded.

Q. State whether there was at any time, a breach in that south pier, and if so, how you filled it up? A. We put in some brush and a buttress crib to keep the water from getting into the old channel of the river; this is along at the west side of the sand-bar when the sand-bar and the river joined; that breach was made by the water running out and we filled it up with brush.

Q. What kind of brush? A. We went down on the beach, here on the north side of the river, and cut them off juniper and cedar and drew them there and put them in.

Q. Was it exactly on the line of the sand-bar and the river? A. It was right joining the sand-bar and the outside of the pier.

Q. Do you know whether those things have been taken up? A. I know so.

Q. Describe that crib? A. It was a crib the same as the other cribs, only not so deep. It perhaps was not so wide, perhaps twelve feet wide, and the others were twenty or twenty-four feet; it was a smaller crib, and perhaps only two or three sticks on it; it was outside the pier, extending north and south.

COURT—Did you put anything of the kind in any other crib? A. I put nothing of the kind in any other crib except that, and immediately around the ends of it; these materials are not in any other place in the piers; there may have been some of it on the outside of this crib, or somewhere in that vicinity; it was intended to stop the water from flowing out and in.

Q. Did you show these points to Mr. Hanchett or Mr. Talcott? A. I don't think I did.

Q. Did you point out these piles to Mr. Denton at the time this map was made? A. Yes, sir. I didn't go over the whole work all along; I guess I went along with him from the end clear in to the garrison.

Q. Did you do so with Mr. Hanchett? A. I don't think I did; it was only Mr. Denton.

Q. What do you know in regard to some projecting timbers on the south side? A. These projecting timbers are across the sand-bar from this point, [indicating,] running west. When we excavated the sand as low down as we could for water, we laid timbers longitudinally across the pier, and then we commenced what we called puncheon work and laid it crossways on these others. We

laid these puncheon sticks close together the width of our pier across the others, east and west, and our next longitudinal timber above that. There was 230 or 240 feet of that work.

Q. When this map was made were these timbers still to be found? Some of these timbers laid longitudinally there. I believe the water had worked around and worked them down, but the most of them was in sight for I cannot say how many feet, but some 250 or 300 feet of this puncheon work across was in sight.

Q. What locality did they indicate? A. They indicated the lay of this thing. Here was the south end of these timbers, and there was the other end [indicating.] They were on that sand-bar. At the time this map was made the sand had all washed away around them. It was where the old sand-bar was; but at the time I showed him this place I think you couldn't go along there without getting wet, unless you had on boots. The sand had worked away into the river and even into the lake shore.

Q. You spoke of some accretions being made in 1835, and you thought some 20 or 30 feet: how far north did they extend? A. Well, I don't think they extended further than 60, or 80, or 100 feet.

Judge Higgins.—The Court will understand the defendants as taking an exception to all testimony tending to prove where the lake shore was south of the south pier, previous to 1833.

COURT.—The Court thinks if they can show where it was, at a particular time, and then show what particular change took place in it, it may tend to establish the issue.

Cross-Examined by Judge Higgins.

Q. You came here in the summer of 1833? A. In June, 1833.

Q. You went right to work on the pier? A. I went to work as soon as I could get materials ready—timber.

Q. The river then emptied at Madison street? A. Somewhere in the neighborhood of Madison or Washington.

Q. There was a bar or sand-spit, 2 or 3 feet above the water, extending down to Madison street? A. Yes.

Q. What was the width of that bar? A. I think it was about 230 or 240 feet at the point where we run the pier across it.

Q. On the south pier didn't you commence at the garrison and extend the work to the east bank of the river; and was not that the crib you put in? A. Yes, in the neighborhood of it.

Q. Didn't you then leave a space of 70 feet, with a view of turning the river around the end there (a very mistaken policy, but your captain thought it would answer the purpose,) that the river turned through that open space might wear the sand away, in 1834? A. I think, late in the fall of 1832, we closed that whole work up in the neighborhood of the water.

Q. Didn't you leave a space of seventy feet on the east bank, and then commence and extend the cribs two hundred and thirty

feet east of that? A. I think not; I think we kept on from that crib, and run it up on the bank.

Q. Lieut. Allen says: "The work was commenced in the summer of 1833, * * but the progress of the work was limited during the season to the laying of the crib-work, dam, or pier, to the surface of the water, nearly across the river, on the line of the south pier, and after an interval of about seventy feet, extending a detached pier, two hundred and thirty feet long, across the bar, separating the river from the lake." Do you remember that interval of seventy feet? A. No, sir.

Q. Are you at all certain about the distance being two hundred and fifty feet across that bar? A. No sir; it is a mere matter of judgment; I never measured it; it's a mere opinion as to where the lake shore was.

Q. It might have been three hundred feet? A. No, sir; I don't think it was over two hundred and thirty to two hundred and fifty feet across the bar

Q. How far did this pier go beyond the lake shore, at the time you built the two hundred and thirty feet? A. I think it terminated right at the lake shore.

Q. Are you sure? A. I am very sure. It might have varied three feet.

Q. Didn't you tell me this morning it might have varied ten feet? A. Yes, sir, but I wasn't under oath.

Q. But I would expect a gentleman to tell the truth if he was not under oath. Didn't you tell me that at the point where the crib struck the lake shore, it might have been ten feet? A. I told you somewhere in that neighborhood; I say so now; it may be ten feet, but I don't think it was more than two or three feet, that is to say it might have extended to the edge of the water. [Witness offers to take the map.]

Q. No, sir, I would rather you would not look at it yet.

Q. You say it might have gone ten feet short of, or beyond the water? A. No, sir, I don't think it went beyond, or fell short more than two or three feet. I think the calculation was to run just there to the lake shore, and leave it.

Q. You don't remember this seventy feet interval? A. No, sir, I think as we came up on the bank from the river, we built angling cribs, that is wedge pieces.

Q, They would hardly have built cribs for two hundred and thirty feet, and made bottoms with a view of settling, and then have disregarded the whole plan, and filled up the river? A. They possibly might not have filled that space up.

Q. Didn't the water run around this vacant space and tilt the cribs over? A. I remember the water running around that crib —running out and in more or less—but it had no effect, and didn't run on the south side, to amount to anything, that is in 1834. It run immediately on the north side of the south pier, but being such a mass of water above this sand bar, it went over.

Q. You don't remember about this gap of seventy feet? A. I don't think there was any gap below the surface.

Q. If it was there, would it not be above the surface? A. I mean above the surface of the water, there was no gap there.

Q. You wouldn't build a crib above the surface of the water, and have nothing below it? A. No, the crib went right up against the sand bar, right up against the other crib on the sand bar, as near as we could get it; that's my best recollection.

Q. You stated that they canted the cribs north, afterwards, in consequence of some captain's saying they could get into port easier, in a northeast wind? A. Yes.

Q. And you supposed that this point at the angle was the lake shore, from the fact of their starting from that point north? A. Well, we built that pier across there in the summer of 1833. We took the stone from the Garrison: it was unloaded from the boats, and we wheeled it all along that pier, the two hundred and thirty feet across on the superstructure, and filled up the cribs; we couldn't get the scows in when they fetched the stone in them; they wouldn't float to them; the cribs were on dry land, and they would only float in the river.

Q. The river broke through in February, 1834? A. Yes,

Q. How much of a channel did it break though in that time? A. I should think sixty or eighty feet wide, and, I guess, nine or ten or twelve feet deep. It continued to discharge itself through this channel ever since.

Q. The water was pretty high in '34? A. Yes, sir, they told me so; I only came here in '33.

Q. The Aux Plaines had overflowed and run across? A. Yes, the water was higher than in '33, when I came here.

Q. Has the whole of the water discharged itself into the lake directly, ever since? A. Yes, you may say the whole of the water, possibly some went through in the slip.

Q. It discharged itself in that direction when you were at work on the cribs? A. Yes, sir, after February, '34.

Q. You framed timber in the summer of '34? A. Yes, we framed them right across from this sand spit, on the north side of the pier, just a little ways back from the water. A great deal of the timber came down the river, and we hauled it up and framed the crib and hauled it back again, and then floated them to where they were put in. We first took them to some convenient place along the river and built the cribs. After they were formed we took them and hauled them down, and rolled them into the river. When we wanted a crib we went up and floated down a crib. They were thirty, thirty-five, or forty feet long, and twenty-four feet wide.

Q. How many logs were on top each way? A. More or less, some a dozen. On the first two or three cribs there were probably two or three sticks on a crib.

Q. How much did they draw? A. About two feet, ten inches. Those which were extended farthest out into the river drew more as we put more logs on in proportion. We used to build them, I guess, about one hundred feet west of the first crib. We brought brought them down on the north side; we used to roll them up along the river to Kinzie's, as we called it, that is along up further. There they were put up.

Q. The first, second, third, and fourth cribs were launched into the river and taken around, were they not? A. Yes, we framed them two hundred or three hundred feet west of the first crib we put down on the north side. We hauled our timber out there in order to keep it in the dryest place. When the big winds blew, it would blow the water over there, and we used to get the timbers up to the highest convenient place. After we hauled it from the river, we had to get it into shape, and the less we hauled it out the less we had to haul it back again.

Q. The timber was floated down the river, and then you took them back to this spot, and framed them; then down to the river again, and floated them to their places? A. Yes.

Q. How much would they draw? A. These would draw about two feet and ten inches, and others more. Our timber was about a foot thick. If we had three sticks, it would draw about two feet. Some sticks would not sink as deep in the water as others.

Q. The first two cribs, you think, had three timbers? A. No, sir, I guess they didn't have more than two.

Q. The next? A. I guess, perhaps, two.

Q. The next? A. It went on in the same proportion, increasing. As we went out from the beach, the water would gradually grow deeper, and then gradually become shallower, until we went over a little bar, and from that it would grow deeper again, until we came to the next bar. There was a succession of bars, so that it was deeper and shallower. We used to know how much water we had to lay the crib in, so that we wouldn't have to lay a round or a course or two courses of timber to get it to the bottom, and get the stone in.

Q. There was no difficulty about water in floating them? A No, sir, not after 1834. The channel was from sixty to eighty feet wide after that freshet, but it immediately filled up, more or less.

Q. Where did the river run at that time? A. It run right along side of the south pier. There was no sand between the north side of the south pier and the water; it was water all against it; it took the sand all away. When we got our cribs out, the the channel was not so wide. The surface might perhaps have been in the neighborhood of as wide; but the bottom had filled up and got narrower and shoaler; there was not so much current to carry it out.

Q. You excavated to lay your first crib? A. Yes, for the west

end of it we shoveled out a little, so that it would not lay so slanting.

Q. You hauled it up on shore? A. Yes, a piece.

Q. There were no piles in the first crib on the north side? A. No, sir, they put in two piles on the south side of the first crib.

Q. Did you go back after it was settled, and drive piles to strengthen the south pier? A. There were piles driven on that south pier afterwards.

Q. Across where the sand-bar used to be? A. No, I think there was none along there, though there might have been; we drove them merely for our own convenience, to hitch to, not to protect the pier particularly; to tie scows to, etc.

Q. Does the lake vary considerably? A. Well, from 1833 up, I think it kept rising until 1838.

Q. It really rises and falls every few years? A. Yes, it has since I have been here. In 1833 it was lower than in 1834, and it rose till 1838, then it fell back in the neighborhood of its old level.

Q. It's very high now, is it not? A. Well, I have not been here for several months to notice, but it was last season.

Q. Did it rise much from 1833 to 1838? A. Yes. It fell again after in 1838, in the neighborhood of the original place it was at in 1833. As a general thing, it is about the same thing; only varies from year to year, more or less; I don't know as I could tell the time it began to fall. I kept no record of it.

Q. How wide was the sand spit opposite Madison or Washington street? A. I could not say how wide it was. From where we crossed it with the pier, it ran down to a point—it ran on a gradual taper all the way down, I think; it might have varied.

Q. What was the direction of that lake shore, extending south of this sand pit? A. I think the general direction of the shore was a little east of south.

Q. How far did the shore extend east of south at Madison street? A. I can't tell how far it was; but there has been a great deal of land washed away from there since I came here. Then, there was the width of the river. and beyond that the width of the bar beyond, at Madison street. I suppose it would be east of south.

Q. The first three or four years, you think, the accretions were slow? A. Yes, sir, very slow.

Q. You think there was not much accretion until 1838? A. Yes, there was considerable in 1836-7, but in 1834-5 I don't think there was but very little—about thirty feet.

Q. Why should it not form in these years as fast, or more rapidly, than the others—the angle being smaller, and the water more shallow, and the same causes existing? A. I don't know. I ain't no scientific man, and don't understand that kind of business much; but I have noticed the shore, and always thought we had to get enough sand somewhere in the neighborhood of the

shore, before it would come on the shore. But whether it's so or not, I couldn't say.

Q. I suppose there is a current down the shore, and when that current is checked, it deposits the sand carried along with it? A. It does, more or less, but it has got to fill up between that and the lake shore—to get out to a certain degree like, before it will heave much of it ashore. That's my opinion, but still it may not be so. That's the way I have noticed it has operated since I have been here.

Q. You have not a very distinct recollection of that formation—nothing calling your attention to it? A. No, sir; only I worked there every day, except when we were getting out cribs and timbers.

Q. You framed the timbers and took them down the river? A. Our timber came down the river; some of it came from Calumet into the river, and was hauled out there. We framed it on the bank of the river, and then took it down the river to the pier.

Q. How much higher is the ground along about Shapley's pile, and east of that than it was at the time these piles were driven? A. The sand used to drift and blow up on shore from the water; but aside from that it's very little different. I guess the sand is three feet above the water now.

Q. If this pile had been driven a hundred feet east of Shapley's pile, how deep was the water there? A. May be three or four feet.

Q. Then it was probably not driven over eight or ten feet? A. Yes; the piles were choice timbers, picked out and dressed, and all cut twenty feet or thirty feet, and they were driven down, if they would stand it, to the top of the water, and the deeper the water was the less we had to drive them.

Q. The surface of Lake Michigan has not varied more than three feet? A. No, sir; I suppose not.

Q. If the lake is now three feet higher than it was then, and it was driven in three or four or five feet water, and there is three or four feet additional of sand drifted, then the pile was really only driven some five or six feet? A. It would be driven ten or twelve feet, being a twenty-five foot stick.

Q. But this one that is pulled up was only nineteen feet? A. Probably that was not quite as deep, because it did not grow deep as fast. It may not have been twenty-five feet when it was driven.

Q. It was only eighteen or nineteen feet from the surface, and the sand and water have raised since, so that it was not driven nineteen feet? A. O, no; it has filled up since.

Q. That filling up, and the rise of the lake would make eight or nine feet, or over, above the surface of the lake than beside the height of the sand above and the present surface? A. Yes; it would be ten or eleven feet, I suppose.

Q. These piles were driven along there invariably, in water of pretty even depth? A. Yes; it run gradually off deeper and deeper, until we come these bars, and then it shoaled, and then it was deeper again. There were little channels like between the bars under the water.

Q. There was no north pier until August, '34? A. No, sir.

Q. Do you remember of some timber floating off there on the north side, in a storm that abraded the corner of these lots, during 1834? A. Well, the water might have washed over there, so as to bother the timber, so that we had to haul it up from the lake shore, but I wouldn't be positive.

Q. You stated, I believe, that the river channel in 1834 was not as wide, but it was the same depth it was usually? A. No, sir, I didn't state it was the same depth. I don't think it was as wide, but it possibly might have been. I know it was so narrow, that is, the sand filled up the channel so that we had to pull our pile-driver through with a capstan while we were at work. The sand had drifted into the channel.

Q. How much did that pile-driver draw? A. Sixteen or twenty inches.

Q. It must have been more than that, because you had cribs that drew more than two feet? A. We had two ——— to hitch on and pull it.

Q. You stated that in the freshet of February, 1834, it came out in a large channel? A. Yes, about the middle of the month.

Q. You stated in your former testimony, "The sand formed as we built the north pier." What did you mean by that? A. Well, I meant as I mean now.

Q. That it formed only about thirty feet until October, 1835? A. Yes, I am pretty positive that it didn't make but very little for two or three years.

Q. You stated on direct examination, for three or four years? A. I might have stated so, I don't say now whether I did or not.

Q. How much had it made by the fall of 1837? A. Probably two hundred feet. It was one hundred and fifty to two hundred feet by the fall of 1837.

Q. What, in the fall of 1836? A. Well, I can't fix the time positively, or the number of feet; I have kept no log of it or nothing.

Q. If you had been away a number of years, after having been there a time, would you not remember that time better than if you had been there continuously? A. If I hadn't been there for eight or nine years, I don't think I could have guessed any nearer than if I had been there every day.

Q. If the beach was constantly changing, and you went away on a particular day, could you not state better about where it was on that day, than if you had been there all the time? A. Yes, I presume I could.

Q. Where would you fix the increase in 1837? A. It might have been in the neighborhood of one hundred feet; I couldn't swear positively as to that; I never went there and measured it at all, as I know of.

Direct examination resumed by Mr. Arnold.

Q. Down to the fall of 1835 or '36, in high winds, did the lake continue to break through behind these cribs into the river?

Objected to. Objection overruled.

A. I don't think the water run over; it might have occasionally run over in 1835, in the first season in these biggest blows, but I don't think it did after that; t may have run over some time that season, but very little.

Q. Was it a fact that you had to dredge the sand out of the channel of the river?

Objected to. Objection overruled.

A. We went down there—I don't know how many men—lots of men—when the water was high, and picked and broke the sand. There was a sand crust, probably six or eight or nine inches thick, and hard froze over, and the water running over that; it wouldn't work out readily, and we used to go there and take sledges and force and break it down and give the water a chance to run out.

Q. After that was washed out, did the river make a channel for the harbor, or was it necessary to dredge it? A. It kept about the same condition, so that we could get out with our small vessels, until 1836, and in 1836 we dredged it out.

Q. Did the water wash over the sand in those days? A. No, sir.

Q. It hadn't quite filled up enough yet? A. No, sir.

JACOB MILLER, called by the plaintiff, being duly sworn, was examined in chief by Mr. Arnold, and testified as follows:

Q. When did you come to Chicago? A. The 25th of May, 1834.

Q. What did you go to work at when you came here? A. I went to work for the United States, in a blacksmith shop, down on (*on*) the pier, at the U. S. Government works.

Q. Do you remember when the first crib was put in? A. Yes, it was the first part of August,

Q. How did they put it in? A. Well, they floated it in the inside of the river, and floated it out, and got it around, and got it on shore; the west end rested on the shore; the sand was shoveled out so that it would not pitch, but was pretty well leveled. The east end was in the lake.

Q. How long was it? A. I don't know, thirty-two or thirty-five feet long; it might be two or three sticks from the bottom up.

Q. How did they fasten it? A. We let it stay there.

Q. Do you remember the first pile that was driven on the north

pier? A. That was at the second crib. We put that in on Sunday morning; the first crib touched the lake shore; the east end run out into the water, but the second crib we put down on Sunday. When we put the first crib out we didn't drive piles, but when we put the second crib out, we drove two piles on the north side, and two on the south side. We drove no piles on the south side of the first crib.

Q. How did you drive that first pile in the second crib? A. We drove that with the pile-driver, with which we drove all the piles.

Q. What sort of a pile-driver? A. A spile-driver, I guess it was twenty-two feet wide, and forty-four or forty six feet deep, by about three feet high. Our gin stood up on one end, and the horses on the other, so as to keep it level, and our driver drew about eighteen to twenty inches of water, sometimes it was a little more. When we drove that spile, our near end went up against the pier, and our other end went north forty-four or forty-six feet; our spile-driver was so the gin stuck over. We always drove our spile on the inside of the work.

Q. Was that first spile driven where the lake shore was? A. It might have been twenty or twenty-two feet west from that first spile to where the water was. On account of the water, we couldn't get the machine up, and we drew it up to drive the spile on the first crib. On the other side we had more water, and drove the first spile on the south side.

Q. Were you with Denton when he made his survey ten or twelve years ago? A. Yes, sir. I don't recollect his name. I recollect being down.

Q. You remember Shapley's pile? A. Yes, that is the pile I spoke of. The first pile on the north side of the north pier, at the second crib from the angle where the lake shore was.

Q. How far west of that pile was the lake shore? A. May be twenty or twenty-two feet, the water came to the shore in still weather there.

Q. What makes you remember that it was twenty or twenty two feet west of that spile? A. I had been working in the blacksmith's shop most of the time, and sometimes taking out a crib, it took all the hands we had, and I went out. My shop stood about two hundred and fifty feet from the lake shore, and from the river, may be eighty; generally I didn't have to go out, but when they had to have me, I was called, and all the hands had to go and help, and I helped them to put in this second crib on Sunday.

Q. Do you remember how heavy the hammer was in that pile-driver? A. Well, I guess in the neighborhood of two thousand four hundred weight.

Q. When Mr. Denton was down there, did you point out that pile to him? A. Yes, sir.

Q. You and Shapley? A. Yes, I pointed out the shore where I calculated the shore was.

Q. Could you find the two piles that you drove in the first crib? A. Yes.

Q. Where they still standing when this map was made? A. Yes, sir.

Q, Is there any angle in that north pier? A. The angle is where we started our crib-work on the lake shore. Then we worked out east from the lake shore [taking the Denton map.] Here is where we commenced. My blacksmith shop was somewhere here, about two hundred and fifty feet from the lake shore.

Q. When you went down there in 1852, when this map was made, could you find that angle? A. Yes, it is there yet to-day.

Q. Is the crib-work, east of that angle, different from that west of it? A. It is the same width; it is made a different way. There are no spiles driven for several hundred feet—over one hundred or one hundred and fifty feet. From the angle west there is no spiles; but over here there are spiles driven all along In the north side of that pier these spiles were ten feet apart.

Q. You say, that in driving that spile, the spile-driver fronted south? A. We had it on the north side, and the front was to the south. That was twenty-two feet wide, and the hammer was here [illustrating]. The driver was forty-four feet deep, and it was standing to the north, facing south—facing the pile.

Q. How often were they driven? A. Every ten feet apart they were driven. On the south side they were driven just the same. The water floated the pile-driver on the south side. We had more water on the south side at first; we had more water on account of the sand-bar being worn off; when we drove them on the south side, our machine had more water, and the machine had a better chance. When the lake shore was further out, the machine could not get up to it; but we had a chance to get further west on the south, on account of the river.

Q. That enabled you to drive these piles further west? A. Yes, sir.

Q. Two on the north, and three on the south side to the first crib? A. Yes.

Q. You say Shapley's pile was twenty-two feet from the shore? A. Yes.

Q. That was in August, 1834? A. Yes.

Q. Did you remain there until 1835? A. Yes; I remained until 1841, and to year before last, when they had that work going on.

Q. From that time to the present there has been no work on the harbor, but what you have been employed on? A. Yes, I calculate to go out next month.

Q. What was the condition of the lake shore in 1835, the next

year after that pile was driven, as to accretion? A. There might have been a very little accretion, but not very much. There was hardly any the first year.

Q. Why? A. I don't know what was the reason. In the fall when we left, I did not see that any land had been making there; I didn't notice hardly any in 1834.

Q. Do you remember about the water breaking through, and coming around the west end of these cribs? A. I know it came around there. We had to build the pier then. This angle run out, and they brought stone and put it in there. We put stuff to not let the water get through. I can't recollect whether it was 1834 or 1835.

Q. You remember you put that in straight north from that [illustrating] A. And manure to keep the water from running around. In 1834 we had pretty still weather, except, I guess, in the fall. I know, in the fall, our crane-scow and deck-scow were out. We had all out, except, maybe, two, and they got away. That was in the fall of 1834, and Major Handy, Sam Jackson, and another little fellow looked and found the crane-scow, and the other scow never came back.

Q. After that, did you put in that stone? A. We hadn't put it in before. If we put it in, it must have been after.

Q. How far north was that little pier? A. It took, may be, twenty-five or thirty feet long. We put it right straight in there. [Witness spoke so indistinctly, and with such broken accent, as to render some words unintelligible to the Reporter.]

Q. Was that pier built so as to protect the shore, and prevent the water coming in there? A. Yes; there was an old bar there [indicating the place on the map]. In 1835 we went up to get out timber, and calculated to build a dredge. We built a dredge in 1836, and then we calculated to take this out.

Q. Where was this little short pier? A. West of the angle, may be five or ten feet, close by the angle. It run west of the angle so as to come in where that was.

Q. Do you know how far from the angle Shapley's pile is? A. I don't know; if the first crib is thirty or twenty-five feet, Shapley's pile is forty or forty-five feet from the angle.

Q. Then Shapley's pile was forty or fifty feet east of this little L? A. Yes.

Q. When do you remember of seeing this last? A. I guess it was about three years ago, as I came along there. I found it in the same place where I put it; the same spot where it was before.

Q. Was that L put in in 1834 or 1835? A. That I couldn't tell. I rather think it was put in in 1835, but I wouldn't swear whether in 1834 or 1835. In 1834, before getting out timbers, all hands went over to Bridgeport to get stone, and took the scows over to where the Rock Island depot is, and the river froze up. And after we got some stone, we couldn't get the scows. They

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Q. Do you remember about the water breaking through, and coming around the west end of these cribs? A. I know it came around there. We had to build the pier then. This angle run out, and they brought stone and put it in there. We put stuff to not let the water get through. I can't recollect whether it was 1834 or 1835.

Q. You remember you put that in straight north from that [illustrating] A. And manure to keep the water from running around. In 1834 we had pretty still weather, except, I guess, in the fall. I know, in the fall, our crane-scow and deck-scow were out. We had all out, except, maybe, two, and they got away. That was in the fall of 1834, and Major Handy, Sam Jackson, and another little fellow looked and found the crane-scow, and the other scow never came back.

Q. After that, did you put in that stone? A. We hadn't put it in before. If we put it in, it must have been after.

Q. How far north was that little pier? A. It took, may be, twenty-five or thirty feet long. We put it right straight in there. [Witness spoke so indistinctly, and with such broken accent, as to render some words unintelligible to the Reporter.]

Q. Was that pier built so as to protect the shore, and prevent the water coming in there? A. Yes; there was an old bar there [indicating the place on the map]. In 1835 we went up to get out timber, and calculated to build a dredge. We built a dredge in 1836, and then we calculated to take this out.

Q. Where was this little short pier? A. West of the angle, may be five or ten feet, close by the angle. It run west of the angle so as to come in where that was.

Q. Do you know how far from the angle Shapley's pile is? A. I don't know; if the first crib is thirty or twenty-five feet, Shapley's pile is forty or forty-five feet from the angle.

Q. Then Shapley's pile was forty or fifty feet east of this little L? A. Yes.

Q. When do you remember of seeing this last? A. I guess it was about three years ago, as I came along there. I found it in the same place where I put it; the same spot where it was before.

Q. Was that L put in in 1834 or 1835? A. That I couldn't tell. I rather think it was put in in 1835, but I wouldn't swear whether in 1834 or 1835. In 1834, before getting out timbers, all hands went over to Bridgeport to get stone, and took the scows over to where the Rock Island depot is, and the river froze up. And after we got some stone, we couldn't get the scows. They

laid there until next spring. They were froze up all winter. We calculated to get some more stone then, to put in that L, somewhere in that pier—where, I don't know.

Q. What was this stone to be put in for? A. I don't remember. I wanted to get some stone.

Q. Do you know what time it was these scows were washed away? A. No, sir. It was in 1834—late in the fall.

Q. Did you do any more work afterwards? A. No. We maybe put in one crib more. We replaced them where they washed away.

Q. This short L crib was put in after you lost the scows? A. Yes.

Q. There is no doubt about it? A. No, sir, no doubt; we put it in after we lost the scows.

Q. How far had the accretion gone from the time you put in the L, until October, 1835? A. Well, I don't know, it was pretty hard to tell. I never took notice how much it did make.

Q. Do you remember? A. Well, they brought on manure from the barns, and stuff, and put it in there; and whenever we had a blow, it ran over there; and whenever it was mild, it didn't come over.

Q. Did it fill out from the shore east, and if so, how much? A. I wouldn't say as to that. It's pretty hard to tell. I might give thirty, forty or fifty feet; however, I won't go over eighty feet. It's thirty, forty or fifty feet from the old lake shore. I won't go over fifty feet from the lake shore—from the angle.

Q. I mean from 1834 to '35, in the fall. A. In the fall. I don't know when we went to work. We started in 1835, may be a fortnight before Christmas—somewhere in that neighborhood—to the woods, to get out timber again. And about the first of January, we got up in the woods, getting out timber.

Q. Were you down there when they pulled up one of these piles? A. I was there, and saw them put on gins and screws, and pull it out; and saw them when they had pulled it up.

Q. When was it? A. I don't recollect. If I took notice, I have forgot.

Q. Do you remember where they put in some brush, on the south pier? A. Yes, sir, that was on the west side of the bar, and east side of the river. We run out there a little crib, six or eight feet wide, that didn't lay straight, but so fashion. The south end laid on the bar, (obliquely to the south pier.) It touched the pier.

Q. What kind of brush? A. I don't know. Some little brush got up here—juniper.

Q. Did you ever know that sort of brush being put in any other place? A. Yes, we put in some in a crib over west in there. I saw some brought in a scow. I know they put them in there, and put in stones. We had plank laid along so that we could get over. When they raised it, I was not there.

Q. Were you there when they put in that crib on the south? A. No, sir, it was in when I came.

Q. Where was the shore at the south pier, in reference to the angle? A. It was at the angle, on the south side.

Judge Higgins.—At what time is this? A. I was not there in 1834, when they made it. We started both angles on the lake shore, both on the south and on that side. This was laid when I came here, [illustrating,] and we started the south pier over on the lake shore. It was over the bar before I came—may be two hundred and twenty-five or two hundred and thirty feet. There the bar was left, and the angle is there.

Q. From the angle in the south pier, east into the lake, are the piles in the cribs driven on both sides? A. Yes, except on the south side. The men had kept off from the lake shore twenty or thirty feet. It was that far before we had a chance to drive piles on the south side of the south pier. On the north side we could get in. They drove some before I came, and we ripped up some crib work on the old south pier, and we came into the old channel of the river, and drove some piles outside of the pier to protect them from moving. We ripped up some of these piers, and drove the piles inside, in the old channel, so as to keep the pier. It got away somewhere there, close by the water there. They drove some piles there, close by the inside, and some outside.

Q. From the lake shore east, how were the piles? A. They were driven ten feet apart on both sides, where we had a chance to get up with our machine by the lake shore. We had to keep off on the south side, I don't know how much, but twenty or thirty feet.

Q. Did you point out to Denton this angle in the pier, and these piles driven in the old lake shore? A. Yes, certainly. The railroad ripped up the pier.

Q. But before that? A. Yes, we showed him all these piles where the old lake shore was, and the angle was, and the spile we drove about forty or fifty feet inside, and the other to keep it from going over north.

Q. Did you see any part of that taken up by the railroad? A. I saw it, but never was present.

Cross-examined by Judge Higgins.

Q. You came here in the summer of 1834? A. Yes, sir.

Q. Did you notice that corner [illustrating by the map] to see whether it was abraded any by the action of the lake? A. No, sir.

Q. You say on the south side of the north pier you got further west with the pile than on the north side? A. Yes, we went further west with it; we had a chance to drive two piles. Our piles were ten feet apart, and you can see the difference.

Q. The pier was 24 feet wide? A. Yes.

Q. On the north side, you couldn't get so far in? A. No, the lake shore runs kind a little further east, and the spile-driver was about 44 or 48 feet. It touched the water and the shore, and we wanted our machine to come square up to the work, but we could not get any further in.

Q. When you came to the shore on the north side of the pier, it run east, going north? A. Yes, on the south side we could get farther west than on the north side, or else we couldn't have got in these spiles. We drove in two spiles, that is about 20 feet further, when the old sand-bar came in between the two piers, and this kept rounding off, and we had a chance to drive them. [Taking the map.] Here on the north side we couldn't get any farther, because our machine touched shoal water; when we came on the south side the bank got shorter, and we had had a chance to get in farther. Here, on the south side, the sand-bar ran right across, and on the north side it sticks out farther east, and our spile driver touched, and we could not take it up so, but had to let it lay square.

Q, How much farther west could you get the spile-driver on the south end than on the north side—how many piles? A. Two or three.

Q. How far apart were they? A. Ten feet apart, all the way.

Q. Then you drove three piles further west on the south than on the north side? A. Yes, two.

Q. That's twenty feet further? A. Yes.

Q. You say the water was deeper on the south side than on the north side of the pier? A. Yes, the water was deeper on account of the lake shore running so from the pier.

Q. There was more land east of this point on the north than on the south side? A. Yes.

Q. This corner appeared to be rounded off? A. That is my recollection. This side we had a better chance to get out, and above here the machine could not get out. [The witness and counsel passed around to the jurors to show them the localities on the map.

Mr. Wills—Where was the channel? A. on the south side.

Mr. W.—And you can get in on that side farther than on the north side, because of the shelving here? A. the sand-bar washed away, and the sand there got rounded off a little, and we had more water there to get in than on the north side.

A Juror—You say the lake shore here cut the pier here, at an angle large enough for the pile-driver to get farther up? A. Yes.

Q. You didn't go there until June, 1834? A. No, sir. The river had broken through, and run north of the south pier.

Q. If it had carried off 150 feet, there, you would not have known it? A. No, sir.

Q. You don't pretend to state whether that was the old lake

shore? A. No, sir, I only state where I found the water. The shore rounded off to the east there, when we put this down.

Q. Are you not mistaken about the juniper bushes you said you put in? Wasn't it done before you came to the country? A. No, sir, we got them out here north. I had been here more than a week, and George Chaudleef, Zeke Morrison, and another fellow, and me, went up and got them. They put them on the north side of the scow and crossed the river.

Q. In what month? A. It must have been done in June. It was not done in July, it was done in June.

Q. You say you did not notice the shore particularly? A. No, sir, I never took particular notice of it, except when we started on the angle. I am sure about that. That was on a straight line. I am not to be mistaken. I know we started on that angle. I have been working on that ever since, where they were working on it, until last summer.

Q. Can you recollect, so as to have in your mind, any particular point in reference to this accretion? A. I never took much notice of it. In 1835, in the summer, or July, or August, or in the fall, my brother-in-law, he is now dead, he commenced in July, and then my other brother-in-law; my brother-in-law died in Milwaukee, in 1845; he had been up in the woods in 1835 and 1836; we were getting out wood for the scows, for the harbor; of course I was pretty well acquainted with the boys around there. I was here; however I didn't take notice, may be, of how many feet of shore there was.

Q. Would you have noticed it? A. If it had made a great deal, I would have noticed it. I know when they first came with the Illinois, they brought her in sideways like. The next one came in when there was only three feet in harbor.

Q. Did anything else happen then? A. I didn't take notice.

Q. In what year was the "Queen Charlotte" wrecked? A. It was not wrecked at all; that was the Harrison; the Queen Charlotte ran ashore on the north pier. I guess it was in 1835; some of them went ashore on the south side of the pier. I think the Queen Charlotte went ashore on the north side.

Q. Are you not mistaken; was it in 1835 or 1836? A. I can't tell. She came ashore and struck the pier there above; one chap got on the bow chains and got in the water and in the anchor chains, and somebody got him up and we got him out.

Q. You can't tell how far out on the pier she was wrecked? A. No, sir.

Q. How far was the ship from the end of the pier; from the angle? A. Between 200 and 300 feet.

Q. You think this vessel went ashore in 1835? A. I think so.

Q. How far did she go ashore from your pier? A. I don't know.

Q. Didn't she get ashore on the outer bar? A. It was in two, three or four feet of water.

Q. Wasn't there a bar beyond the end of the pier? A. Yes, she was ashore on that bar, and there it was where she unshipped her rudder; that was why she couldn't make the harbor.

Q. You have no precise point to fix as to where the lake shore had formed? A. No, sir, none.

Q. Who else worked on that pier in 1834 and 1835? A. In 1836 we had so many Norwegians, I couldn't tell. In 1835 there was Jo. Chandley, and Odell, and Chris. Bomgartner, and Skinner, and Brown, and a Dutchman, and Wm. H. Skinner was there, I guess. Samuel Brown worked there in 1833 and 1834.

Q. Didn't he continue until the fall of 1835? A. He came and helped me again in 1834, and some in 1835. Zeke Morrison was there, too, who lives here in the city.

Q. Where does Samuel Brown live? A. In Milwaukee, or—I don't know. He used to live in the city. I saw the old man, at most, three or four weeks ago.

Q. Did Sweet work there? A. I know him; but I don't know that he worked there.

Q. Did Jackson? A. Yes, the old man. His boy was down there.

Q. Was Burdick down there? A. I don't recollect the name. There was a good many men working there. I don't know the name.

Q. You were a blacksmith by trade, and didn't work on the pier so much? A. No, sir; it was only occasionally I went down on the pier. For a few weeks—almost every day, something happened that I had to go out. When they were getting out cribs it took all the hands.

Q. You stated when it came a storm, the water blew over and ran back of the pier; don't it do that to this day? A. Yes; certainly.

Q. Is it not the reason because the sand is a little higher on the shore, and the water must find an outlet back? A. Yes; that was what they swore on a former trial, that it made over. The outside of the lake is always higher than a little further back. I have seen it break over. Some of them swore it run into that slough; but there was no slough there. It was 40 or 50 feet from the blacksmith shop that they commenced wheeling out, and there was a high bank there, and they had to come around, and they couldn't get it over there. It was several feet high.

Q. The wind sometimes blew so as to make it three or four feet high? A. Not quite three or four feet. I recollect the highest. I never had any water in the blacksmith shop, except one morning it came in two feet water all over the floor.

Q. Could you have planted the pile-driver then? A. No, sir; it was all froze up then.

Court took a recess of twenty minutes.

J. S. HANCHETT, called by the plaintiff, being duly sworn, was examined in chief by Mr. Arnold, and testified as follows:

Q. How long have you been in Illinois? A. I came here in 1833.

Q. What is your occupation? A. Surveyor and engineer.

Q. How long did you reside in Chicago, and how were you employed? A. When I first came here I didn't stop long here, until the spring of 1835. I came back in the spring of 1835: June, I guess, it was. In the summer, I was clerking for John H. Kinzie, in the warehouse in the garrison, on the north side of the river.

Q. Have you surveyed a good deal in this city? A. Yes, sir, in various parts of the city.

Q. [Presenting Denton's Map.] (Ex. E.) Have you ever verified that map? A. Yes, sir, this is the map that was begun by Mr. Denton, in '52, and finished by me. I went out and run over some of the measurements, and found them to be correct, as far as I examined them.

Q. [Presenting another map.] Is that one made by this one? A. Yes, that is a copy of Denton's map. [Witness passed around to the jurors to show the various localities represented.]

Q. Did you examine that north pier? A. I did.

Q. Did you find the piles, and the distance they were apart, from the angle in the pier, eastward? A. I did. In the north pier, from the angle easterly, I found the piles six to ten feet apart.

Q. Did you examine the pier from that angle, westwardly? A. Not much. I observed it was constructed without piles.

Q. Upon what lot in Kinzie's Addition was that angle? A. On 33. I don't know how far the angle is from the line between 33 and 34.

Q. How far from the angle is it to Shapley's pile? A. Twenty-two feet.

Q. How far from Shapley's pile to the line of the lake shore, as laid down by Kinzie's original map? A. That I don't know. That map represents it at forty-one feet from the lake shore, of Kinzie's Addition, as represented on the original map, to the angle.

Q. What is the length of the line between 35 and the fraction east of it, from North Water Street to the place where it strikes the lake shore? A. It is represented as one hundred and forty feet and a fraction.

Q. What is the length of the line between 34 and 35? A. It is four chains and fifty-four links, which is a little over two hundred and seventy feet.

Q. What is the length of the line between 33 and 34, from North Water street to the pier? A. [After measuring]—That pier is about six chains and twenty or thirty links from the street, and that's about four hundred feet.

Q. How much do you make the line between 34 and 35? A.

Two hundred and ninety-nine and 64-100 feet [calculating]; that is from where it leaves North Water street, until it strikes the water, according to the Original Map.

Q. Did you examine the south pier? A. Yes.

Q. Did you find an angle in that pier? A. Yes; opposite to the one on the north pier.

Q. East of that angle, toward the lake, did you find piles driven on both sides of the pier? A. I did; I think they were some six to ten feet apart.

Q. Did you examine the distance across what was represented as the sand-bar? A. Yes; I made it two hundred and ninety-eight feet.

Q. Were piles driven regularly across there on the south side of the pier? A. No, sir; I did not find them. I found piles irregularly driven across what was represented as the sand-bar, on the north side, toward the river; but not as regularly as they were driven out at ten feet distance.

Q. What distance did you find it across what is called the old bed of the river? A. It was some two hundred and ninety odd feet. I don't recollect; I have not the figures.

Q. Was that cottonwood tree, Mr. Kinzie spoke of, as standing near his father's house, there when you surveyed it? A. There were some remnants of it there. It stood on the north side of North Water street, opposite water lot 24.

Q. How near the west line of it? A. It is laid down here accurately, as near as I can tell.

Q. Did you verify this survey, so that you can state it is substantially correct? A. It is substantially correct, so far as I know; it was intended to be so.

Q. Did you plot the old sand-bar addition? A. Yes, sir; from the plats—Beaubien and Walker's.

Q. [Presenting the map]—Is that it? A. That is as I found it.

Q. Do you know any thing about the lake shore in 1835, being at these angles? A. No, sir, not distinctly.

Q. How many feet west of the west line of 34, is the angle in the piers, where the old lake shore is represented to have been? A. It is not far from thirty feet [after measuring.] From the west line of 34 to the angle of the pier, it is about thirty-six feet.

Mr. Arnold, for plaintiff, offered in evidence in connection with the testimony of the witness, the map marked "Denton's map," made April, 1852, also Hanchett's map, the one alluded to above by the witness.

Mr. Arnold resumed the examination—

Q. State the size of these piles that were driven in? A. They were tolerably uniform—from twelve to fourteen inches, I should think—some square ones about that square, and some about that diameter.

Q. What is the distance from the east line of 34, to Shapley's

pile? A. [After measuring.] That is seventy-nine feet; I have figured it, but it is not marked here; I see some figuring here; I have been at work at it. Shapley's pile is on lot 33, and the angle of the pier is also on 33. To Shapley's pile it is seventy-nine feet, making it at the angle, one hundred and one feet—that is, from the east line of 34.

Q. This you have copied accurately from the map of Kinzie's Addition? A. Yes, sir,—taking the measurements that were given on that.

Q. You can't state as to the accuracy of Snow's original map? A. No, sir, I don't know anything about it.

Cross-examined by Judge Higgins.

Q. You don't know anything yourself of the lake shore in 1833, when that map was made? A. No, sir, I had no acquaintance with it in '33, particularly.

Q. Your map is made entirely from Snow's original map? A. This is made from the figures I obtained from the original map.

Q. If that map is wrong, your map is wrong? A. It may be in relation to these fractional lots, if these distances are wrong, I have copied the same error.

Q. If Mr. Snow made a mistake in protracting the lake shore line, you have made the same mistake, also, and if he gave the wrong direction to it, you have made the same error? A. Yes, sir.

Q. When you made this copy, you got the line as accurately as possible from the original map, taking this east line of 35 to be one hundred and forty feet? A. Yes, sir, as acurately as I am in the habit of doing it.

Q. It is as from a map before you that you intend to make it correct? A. Yes.

Q. This east line of one hundred and forty feet, has a base line on Water street of twenty-four feet? A. Yes.

Q. If a party, as this surveyor says he did, stands at that point on the lake, and takes an observation two hundred and fifty or three hundred feet down the shore, to an object on the lake shore at that distance, and with that line or direction established, the east line of 35 having a base of twenty-four feet, would strike the shore line at a distance of one hundred and forty feet down the lake, at what point on that same shore line, ascertained by the observation before, would this west line of lot 35 strike it, starting from a base of eighty-four feet on North Water street, west from the lake. A. [After a calculation.] About four hundred and ninety feet. If it was one hundred and forty feet on the east line of 35, the west line would be four hundred and ninety feet before it reached the shore.

Q. Did you make the river here from the original map? A. Yes, sir.

Q. Does it show it as it is? A. Just about—as near as I recollect.

Q. Don't the original make the river extend across the east line 27? A. I don't recollect. I only intended to get this correct. I have not seen it [original map] since 1852.

Q. Does not the river cut 27, and extend part of the way across 28? A. I don't know. I could not tell you anything about it.

Q. That river you have laid down falls short of reaching the east line of 27? A. My river is not the river of the original map, but as I found it.

Q. You did intend to represent the pier? A. No, sir; I did not intend to copy the original bed of the river, except at this point; it is in Beaubien's Addition. The river is represented by Walker & Beaubien's Addition—that part of it. The sand-spit ran down there, bearing to Kinzie's Addition, which was surveyed into lots and sold. When they put the line across, Beaubien and others claimed the bed of the river, and the sand on that side, and laid out an addition in 1835.

Q. You merely got this addition on this map, which was laid out at that time, and also marked out the ground of Kinzie's Addition, and the protraction of this sand spit south. A. Yes.

Q. Is that map as it existed in 1836? A. That is as near as I could get it from the maps. I did not get it from actual survey. I merely sketched it in order to show its location. All I intended to copy from this [original map] were these fractional lots here; and when I alluded to it, all I intended to copy were these measurements—the figures showing the length the lots there were, that I might arrive at the margin of the lake.

Q. How did you get this sand spit on the south of the south pier, if you did not copy the map of 1833, to get it? A. Well, I extended the lines of the lots—extended with this survey.

Q. You protracted it on from that extension—protracted it from Beaubien's map. A. Yes, from Beaubien's map; the old map of Beaubien & Walker's Addition; and that was the way it was shown on that map, and that was all the means I had of copying it in.

Q. You don't know the accuracy of that map? A. No, sir, I was not engaged enough upon it to say whether it was correct or not.

Q. When you made the survey, you found piles all around here as represented? A. Yes.

Q. You have represented where they were driven through the piers? A. Yes, sir.

Q. Were there any piles driven out here? A. I don't remember now. I carried it out as I thought it was advisable.

Q. You were acquainted here in 1833? A. I was not much acquainted with these localities, yet I think now of such a place

and these improvements. In the latter part of 1835 I began to do a little surveying.

Q. Do you know anything about the rise of the lake during 1835, '36, '37, and '38? A. Yes, sir, I paid some attention to that.

Q. Do you know how high it was in 1833, '34, and '35, relative to what it is now? A. No, sir, only in 1836, when we commenced the location of the Illinois and Michigan Canal. We started from the surface of the water on the east side of this spit, near the pier, calling that our base line and worked from it, assuming six feet of water in our canal, we made permanent points in the pier so as to test the fluctuations of the lake—none of us being familiar enough to make any definite calculation upon it. From that time until some time in July, 1838, it was constantly rising—its maximum height attained was some three and one half feet higher than on the 22d of April, 1836. Then it commenced receding, and, I think, in the course of a year it was nearly back to its original stage. It strikes me it was not far from a year; it was more suddenly than at any other time I have noticed since I have been in the State. A year ago it was up to its usual height, that is, three and one-half feet higher than in 1836. I noticed last fall and winter it had receded something like a foot, not very far from that.

Q. Last fall the water was two and one-half feet above the level of 1836? A. Yes, sir. I could not say from actual measurements by instruments, as I did not test it, but I judge by the old piers along on Michigan avenue, they were scarcely submerged; to-day I noticed they were as usual.

Q. The general average would be what it was in 1836? A. I don't know; about a foot below the maximum of 1838; but I have nothing definite to show that these are the relative times and heights.

Q. [Presenting another map.] You are acquainted with the ground there? A. I don't know, sir.

Q. The scale on that map is one hundred and fifty feet to the inch.

Q. How far would it be from where the lake shore was at that point, according to your notion, on the Original Map, to the line of 34 and 35, down here; or where would the original shore cross the south pier on that map? A. I can hardly tell where it would on this map. I am unable to define it. I don't believe I could do it justice.

Q. You have the scale, the south pier and the point of slanting? A. All these matters I am unacquainted with.

Q. Is it necessary you should know anything about it, more than you could see? A. If I recollect, these lines don't correspond exactly; it is not a continuous line but a curve which does

not follow the straight line; this I think jogged to the west more.

Mr. Arnold.—Would your guess on these two maps be worth anything at all? A. I don't know whether it would or not, I had rather not make it.

Q [Presenting original map.] Can you determine from that whether the pier lies north or south of this line? The width of the lots is sixty feet from point to point, and the distance is over four hundred feet; now show us where the south pier would cross that line? A. I could not tell you anything about it; I can't tell where it would cross on that map.

Q. What is the reason? A. The reason is, in the first place, I don't understand the scale of it, nor I don't understand what it all means exactly by this protraction. You see it represents a different thing altogether from what in surveying I made it represent. I fixed the lake shore by the distance of the lines. These lines begin—

Q. You simply drew a line at the end and you followed the shore as indicated on that map? A. I followed the lake shore as indicated by the length of these lines.

Q. Can't you tell us at what point the pier crosses that line, when you know the direction of the line and the distance? A. I could, probably, by a scale; I could not mark it on that map, probably it would not be correct. I can't tell at what point on these lines the pier would cross on that map. I could not without examining it with a scale of it.

Q. You can't tell by the eye that the south pier would go north of the bottom of that map? A. I should think it would, from the looks of it, that is taking the channel of the river as located here, I should think the pier would run through somewhere in that direction.

Q. Can't you give the distance of this south pier, assuming the lake shore to be where you knew it was, and drawing the line as indicated on that map—can you get the point on the south pier where it cuts the line? A. Not very well, sir.

Q. Could you within twenty, or thirty, or fifty feet? A. I don't know that I could, or, but that I could.

Q. I wish you would draw it?

Objected to, as not proper cross-examination upon anything elicited on the examination in chief.

Q. You can't state that? A. No, sir, I don't think I could state, sir.

Q. You say the water is about two and one-half feet higher now than in 1836? A. I should judge so from the location of these old things.

Q. You made observations in connection with the canal? A. Yes, but I have no point now to determine that, and I had then, you know. When I referred to these old piles, that was only to

tell you how much I noticed of the receding in the past eight or nine months?

Q. The actual survery you made yourself was to tell where the south piers were? A. It was on the south side, and on the south pier, at least to ascertain where the old channel of the river was, and the difference in the character of the piers, and the different superstructure.

Q. Set the date of your survey? A. To the best of my recollection, it was in 1852.

Q. Did you ever survey it before 1852? A. No, sir.

Q. By verifying this map, you made that in 1852. You surveyed the piers and the ground that was recorded, at Walker & Beaubien's Addition? A. No, sir, I surveyed the ground on the north side, and connected it with these piles represented on that map. It was also to represent the different style of crib work, that was all. I did not survey Walker & Beaubien's Addition, nor anything south of the south pier.

Q. It was all water there, was it not, except what the Illinois Central Railroad filled in? A. Yes, sir, pretty much.

Q. In other words, you merely made a copy of Walker & Beaubien's Addition? A. That is all.

Q. You never made any survey yourself? A. Not south of the pier.

Q. You were here as early as 1836? A. I commenced on the canal in 1836, in the spring. I was here in 1833, first.

Q. Do you remember about the accretion on the north side? A. Yes. It is not more distinct than others would have remembered it, but I have observed it constantly increasing.

Objected to.

Judge Higgins stated that he would make the witness his own witness on this subject, and proceeded.

Q. State in relation to its forming there. A. I can only say I noticed it was making land there faster as they progressed with the pier, extending it out.

Q. Do you know what proportion of the pier was covered by sand on the north side? A. No, sir.

Q. Do you remember the distance the pier was out in 1835–6? Y. No, sir.

Direct examination resumed by Mr. Arnold.

Q. You have no distinct recollection about that, only there were accretions on the north side? A. No, sir.

Q. In regard to the length of these lines in Kinzie's Addition the object was to get the length of this as the base line? [Illustrating by the map.] A. Yes.

Q. The length of that line, [between lots 34 and 35] these lines [sixty feet north line of lots] being given, would depend on the degree of curvature of the shore line? A. Yes.

Q. The more rapidly it curved to the west, the shorter this line?

A. Yes, sir; that would follow as a matter of course. [The witness passed around among the jurors, and pointed out to each the lines alluded to.]

Q. In getting the line between 34 and 35, if you have the length of the east line of 35, the more the lake shore curves west, the sooner it will strike the line between 34 and 35? A. Yes.

Q. Tell the jury upon what basis you got that four hundred and ninety feet? A. Well, I assumed that if twenty-four feet gave one hundred and forty feet, we would have four hundred and ninety feet in proportion to the distance from there to the other side of the next lot. That assumes that these lines are all perfectly straight, and this [shore] line would form the hypothenuse of a right-angled triangle.

Q. If that line moved more rapidly west it would sooner strike the line of 34? Yes, sir.

Q. You say you simply protracted these lines on Walker's Addition on file? A. Well, it was copied by me from some map. I can't tell you where I got it. I might have got it from the records, and I might not. I don't know where it came from now.

Q. The part of the map that you surveyed was the piers and the north side of the pier, from the Original Map by these distances? A. Yes, sir. North Water street down to the pier, and extending to the end of the pier.

Second cross-examination by Judge Higgins.

Q. Where would that lake shore protracted, as represented there, have cut the sand spit off.

Objected to. Counsel in discussion, stated the shore inclined east of south.

Witness.—I can tell you better than that. I can recollect of standing on the shore before the pier was built. From where North Water street now is, extending southerly, the shore bent to the west, clear around, until you get opposite to Madison street, or nearly so, although not as rapidly at the lower end as it did opposite the fort.

Q. All the maps are the other way? A. No, sir. After you get to that point there is a crescent formed the other way, and then it bears to the east; in a very early day it bore very much so, because there were very high sand banks away down below.

Q. You were speaking of the general lay of the shore away down below here? A. No, sir; standing on North Water street, and looking southerly, the shore bore to the west more rapidly on the upper part of it, near where they crossed it with the pier, than it did afterwards. Then it was somewhat straighter, until we got opposite the fort, and then it was nearly straight, until we got to Madison street.

Q. Were you on the shore in 1833? A. Yes; I slept in a log cabin on the lake shore.

Q. Were you south or north of the pier? A. I was a good

deal north of it. I slept down there. There were two piers. I went over there on that side of the river.

Q. Are you not mistaken about that? A. I am not mistaken in what I state.

Q. Are you not mistaken about there being a pier there in 1833? A. Not on the lake.

Q. Was there not a pier on the sand spit in 1833? A. No, sir; not that I recollect of.

Q. Would you have been likely to have seen a pier, if put across there, three or four feet high, in December, 1833? A. Yes.

Q. You would be more likely, if you had seen it, to recollect that, than you would be to recollect the lake shore, when your attention was not called to it? A. My attention was called to the shore, because I was surveying there.

Q. What time are you speaking of? A. When I was describing the lake shore, I was describing what I had seen in 1835; they were building the pier then.

Q. Had not the action of the pier worn off the shore and made it a crescent form? A. I had not discovered it.

Q. Was it not generally known in 1835? A. I didn't know it.

Q. Had not a considerable part of it gone away in 1836? A. Very little in 1836; it was worn away; it was very much injured by a storm in 1835.

Q. When you speak of the crescent form of the shore, you mean 1835 and not 1833? A. I mean '35.

Q. Were you down on the sand spit in '33? A. No, sir; I don't think I was on the sand spit.

Q. Were you down on the shore to take an observation of its direction, in '33? A. Not distinctly.

Q. When you swore it inclined to the west of south, you meant in '35 and not '33? A. That is what I said.

Q. You have no knowledge yourself of the shore in '33? A. No, sir; nothing definite.

Direct examination resumed by Mr. Arnold.

Q. Can you state how much it inclined to the west in '35? A. I can't tell exactly.

Q. Is it your impression that it inclined, in '35, more or less than represented on this original map? A. This [another map, supposed, by the Reporter, to be Allen's] looks to me near right. That curvature curves this way, until opposite the fort; then it runs nearly straight until about to Madison street, and then it bore east.

Judge Higgins.—Were not the piers built in '35 on both sides of the river? A. Yes.

Q. Twelve hundred and eighty feet in the lake? A. I don't remember the distance.

Mr. Arnold.—You came here in 1833? A. Yes, in December, '33.

Q. Did you remain here long? A. No, sir, only a short time.

ASA F. BRADLEY, recalled, by the plaintiffs, was further examined by Mr. Wills, as follows:

Q. [Presenting a map of Walker's Addition.] Examine that map and see if you know anything of that survey? A. This a copy of what is called Walker's Addition, laid out on the sand spit, as it is termed. It was made in the winter of 1835 and 1836. It was completed in 1836 and prepared for record.

Q. Look and see when it was made? A. [After looking.] It was recorded June 27th, 1836.

Q. Who made that survey? A. I don't know who made the survey. I finished it and prepared it for record. It was partly made when I came to Chicago. I finished and prepared it for record under the direction and for Amos Bailey, who signs the map.

Judge Higgins.—Did you do the actual surveying on the ground, or merely make it up from the notes? A. I made it upon the ground, some of it.

Q. Did you do the surveying on the east side of the sand bar? A. I made the survey that indicates the shore line on both sides of the sand bar in 1836, for Amos Bailey. There is the meanderd line made by the United States Deputy Surveyor, who made the plat and returned it to Washington, I believe, before it was sold as a fraction—Talcott's line, I believe it was.

Q. This is the plat known as Walker's Addition? A. Yes, sir, a copy of it. That survey, made by the United States Deputy Surveyor, was made prior to my coming to Chicago. When I came here in June, 1836, I found the survey made. When the survey was made I can't say. I was employed by the County Surveyor to complete the measurements in order to place upon the map the shore lines, he being particular about putting that on. We waited until summer time, so that we could go into the water to drive the stakes.

Q. Did you find any discrepancy between the line of the east shore of the bar, which you surveyed in the summer of 1836, and that the United States Surveyor run in the winter previous? A. I did not find as much land as indicated on the map. I don't know where he run his line; he may have run it in the water. I know the instructions to him were to measure that when the wind was off shore, to get as much land as possible above water. [Taking Hanchett's map.] (Ex. E.) The shore line was nearer a continuation across the bar than is represented by this map, according to my recollection.

Q. Do you know where that point was at the angle of the pier, when you made the survey? A. Yes.

Q. What position had that point of the angle of the pier in relation to the angle in the north pier? A. I never took any observation on that with any instruments, but they were in the

general line of the shore. This was the eastern end of the pier, when I made examination?

Mr. Fuller.—How far was that east of the sand-bar? A. I can't tell you in feet.

Q. Then the Walker's Addition survey would connect on a regular line with the shore on the north side, and the north line of the shore curved west in order to join with the shore line on the south side of the pier? A. Yes, sir, not particularly to join it, or that it curved any more than that map shows.

Q. How far will it have to curve in order to connect with the shore line as you found it on the south side of the pier? A. It will have to curve in so as to leave the east front of lot 33, if it joined this shore.

Q. You made this survey in June, 1836? Yes, sir.

Q. At that time you found the shore in the condition as you state? A. Yes, sir. I made no survey of this.

Q. But some observations? A. Yes, sir.

Q. It looked north? A. No, sir, not directly north. The sand as it came down along the shore, when it struck the mouth of the river, was taken up and deposited down towards Madison street. That finally resulted in the sand hills below Madison street. As it was carried down by the current it was brought in like, forming an angle, as it blew over there at the lower end. It was quite low, below the mouth of the harbor, while above the sand hills were quite high.

Q. Was there any accretion on the north side of the pier at the time you speak of, that would have thrown the shore line east, so as to connect with the shore line south? A. There was very little accretion formed in 1836, when I came here.

Q. You recollect the "Queen Charlotte?" A. Yes, sir, I was on the harbor that day she went ashore, on the north side. She came up in the rear of 34 and 35, on the north side of the north pier; that called my attention to it. That was in the spring, I think, of 1836; she came in here and went ashore at this point [indicating the point on the map]. I recollect that [witness passed around the jury to point out the position referred to].

Q. How far west was the vessel carried? A. I can't tell, because these lines were not marked at all; but I tell in reference to the points here.

Q. In 1836, were there any accretions there, so as to throw this line out of its connection south? A. There might have been an angle here. There may have been some accretion here, I could not tell how much, because my attention was not particularly called to it.

Q. I understood you to say the shore line north and south connected? A. Yes, sir. It curved in this way in June, 1836. My impression is that the water flowed across; I know in getting on the bar on various occasions, in 1836, I had to get on this pier on

a plank; the water was behind the north side of the pier, and we had to approach it on a plank; it was either flowing over here, or down here [illustrating by the map], and the plank was kept there all the time, and the workmen went to that pier on a plank.

Q. If there had been any considerable accretion at the time you made this survey, would you have noticed it? A. There has not—it was very small, if there was any. This was June, 1836.

Q. How many years have you been engaged in surveying? A. Twenty-five years.

Q. How long have you been city or county surveyor? A. I held the office of surveyor from 1836 to 1849, when I resigned my office. Since then I have not been employed officially in the surveys of Chicago.

Q. Your statement here, in regard to that shore line, is made from the experience you had in surveying previous to the time you made that survey in 1836? A. It was during that summer of 1836 that I took a more particular interest in shore lines, because my first business here in Chicago was finishing Walker's survey, and it called me to the lake shore. I sought an opportunity to finish that when the wind was off shore, and I did it at odd jobs for weeks, when the wind was off shore.

Q. You were frequently on the north pier? A. Yes, we used frequently to go down to the pier when anything was coming from the east—it used to be a sort of excitement—this used to be a solitary sort of a place, very little to be seen, and curiosity drew me there. It was quite an event for a steamer to come in, and we went down to see it.

Judge Morris—What sort of a vessel was the "Queen Charlotte?" A. A large square rigged ship—I think a British vessel—afterwards altered to a steamer. She was a large vessel, of four hundred or five hundred tons, almost the only square-rigged vessel that came here that season. I recollect being on the pier when she came ashore.

Q. Where did she strike first? A. She struck the sand, on shore, a few feet north of the pier, and I think subsequently swung around, so that she touched the pier. She was afterwards drawn off, and brought around into the harbor.

Q. Did she strike on one of these bars, formed on the north side, under water? A. She came up very near to the land—within thirty or forty feet. She came up very high and dry.

Q. What year was that? A. Well, sir, it was in 1836.

Cross examined by Mr. Van Arman.

Q. Were you employed to make a survey on the south of the river? A. Yes, on the sand bar.

Q. Locating the east line of the bar? A. Yes, on both sides o the bar.

Q. Did you measure across the bar? A. Yes, sir, at every street that crossed the bar, I measured it.

Q. Did your survey extend to the south point of it? A. Yes; it is all laid down here.

Q. Laid down accurately? A. Yes, I believe it is correct, if this is a correct copy. I prepared the map for record.

Q. See if that is the whole of it? A. [After examination]—I don't know whether this is as full as the record or not.

Q. Is that the whole of the bar to the south point? A. No, sir; it is only given here across two blocks. It goes down to Madison street. The dotted lines show the shore lines. I was particular to put the shore line on; that was one of the most particular instructions. I had the survey, as completed in lots and blocks, and on that I defined the shore line. That line is represented by this map, and courses and distances. There is the line returned by the U. S. Deputy Surveyor.

Q. Does that correspond with your measurement of the shore line? A. No, sir; the government meandered line was in the water. The water covered it, when I was there.

Q. How far is your line from that? A. In some places fifty feet, and in some places twenty-five feet; they varied.

Q. Could that difference be produced by the state of the winds? A. That is a simple matter of opinion. This may be made partly by the wind and partly by the rise and fall of water in the lake covering the surface of the bar.

Q. Supposing the meandered line to have been run the winter before? A. The meandered line might have been the line when it was run; but it was not there when I made this survey.

Q. Did you take any observation north of the river? A. No, sir, not professionally.

Q. How did you make this part of the survey? A. The survey was made, and when I took it these corners were standing, and I took these corners. Then I surveyed to the water's edge, each way, to my shore line on the recorded plat. I took no angles here, whatever; I simply made measurements. It was platted.

Q. You put it on a map already made? A. Yes, a rough map. I made the map on record. This was a pencil map for me to work from. I copied the survey as it was made.

Q. Was there anything, at that time, to call your attention to the north side of the river? A. No, sir; only curiosity; I looked over there from curiosity.

Q. Have you a distinct recollection of looking at the north side, at that time? A. Yes.

Q. For what purpose? A. Curiosity as much as anything. I observed it as I observe all parts of Chicago, as a curiosity, and nothing more. I had no particular object.

Q. You made in your mind no comparisons between that and the other side? A. I looked along the shore as I would neces-

sarily, being a public surveyor and engineer, looking at the public works. I was frequently out there; I took an interest in them.

Q. Can you get a shore line and locate it on the map without measurement? A. No, sir; I used these lines.

Q. Could you have made your map complete without them, with any accuracy? A. Not much.

Q. Could you take a shore line three hundred or a hundred feet long, without an observation, with any accuracy? A. I wouldn't pretend to; I would give the general course.

Q. You couldn't get the general course, if it was a crooked line, by a general observation? A. I could on a regular serpentine line if it was an accurate curve.

Q. In this case you would have to take a straight line, and judge how much the shore varied from it? A. Yes, sir; judging from the eye how much the shore line varied one side or the other.

Q. It would be all guess-work by the eye? A. Yes; it would be some guess-work. I have seen a great many miles of meander, and I have always in doing government work, judged to some extent by the eye. I would let my chain-men chain a line on the land. At the same time I have sketched all the projections of the line they chained, and sometimes slightly inside of the line, by the eye.

Q. Have you ever verified the correctness of a sketch made in that way to see how near you came to the truth? A. No, sir; I do not know how much I might vary.

Mr. Wills—Is that custom common with surveyors? A. It is the custom with all Government Surveyors in running meandered lines, to do them that way. If I was to estimate an accurate area here, and get this curved line, I should make offsets and estimate it.

Q. Is not that the only way to make it accurate? A. Not the only way, but it is the most feasible way.

Q. When was it that vessel came in? A. I think it was in 1836; I would not swear positive.

Q. If it was not in '36, was it not later? A. Yes, sir, it was later if it was not '36,

Q. Do you recollect anything that called your attention to the bar in '37 or '38? A. No, sir, not particularly. I was on and off that shore.

Q. Can you tell what amount was formed there in 1837? A. The accretion north of the pier was a subject of discussion among engineers, and particularly those connected with the public works. I heard these discussions frequently as to how much and how fast that accretion would form, with a view to ascertain how much appropriation would be needed, and how much that pier would have to be carried into the lake to make an effectual barrier protecting the harbor.

Q. Can you recollect the date of any one of these discussions? A. I only know they were had from time to time.

Q. At the time the "Queen Charlotte" went ashore, was there anything to call your attention to the accretion? A. No, sir, nothing more than common observation.

Q. You say she came ashore on the north side of the pier? A. Yes, I was on there.

Q. Were you aboard? A. Yes, I was aboard the pier not the vessel.

Q. How long after she went ashore did you notice this? I didn't recollect whether it was the same day, or the day following or a week after.

Q. What time of the year was it? A. I have no recollection. It was during a northeast wind, I recollect.

Q. Was there any time when you attention was called to the state of the accretion on the pier? A. No, sir, not one time more than another. It was no object to me.

Q. Can you state what the accretion was at one time just as well as another? A. Subsequently I made surveys of that land that had accumulated, but can't date them.

Q. When was the earliest? A. I can't recollect now. I know I was called on to measure the addition made there at two or three different times, but I cannot tell any one.

Q. Which pier were you on when the "Queen Charlotte" came in? A. The north pier.

Q. What part? A. I was all along it. People were down there. We were interested in seeing the vessel.

Q. Did you go to the end of the pier? I don't know. I think the end was not approachable. I think the spray would drive us back. It drove violently from the northeast.

Q. Did you go to where the pier went into the lake? I presume not. I don't recollect. I presume the spray would have driven me back.

Q. Have you any better recollection as to how much she came in from the outer end of the pier? A. No, sir. I recollect she came in. I can't tell anything definite about it.

Q. All you know is she came in until she struck ground? A. Yes.

Q. Are you sure she came inside of the end of the north pier? A. Yes.

Q. Are you positive she struck the pier? A. I don't know whether she touched the pier. When she struck, I think she was thirty feet from land.

Q. Didn't she strike the sand-bar outside the end of the pier, and wasn't she brought around into the harbor from that? A. At that time there was no sand-bar outside the pier, not that I know of. She came from the northeast to the pier.

Q. Did she come inside of the end of it, do you know? A.

My impression is, I stood on the pier opposite the "Queen Charlotte." I think the pier was far enough out for us to get nearly to her.

Q. You must have been where the water was deep enough to float her? A. Yes.

Q. Still you were not driven off by the spray? A. No, sir.

Q. Although you swear the water was four feet deep, yet the waves and the spray driven across there would not drive you off? A. No, sir, she protected us from the waves. The wind was from the north—a violent wind.

Q. In that weather, do you think you were out until you stood opposite to where she struck the pier? A. Yes.

Q. How far from the west end do you think you went? A. I can't say.

Q. You formed no opinion as to what part of the pier you were on? A. I don't know. I formed no opinion about the pier; I only went to see the vessel.

Q. Have you any impression as to how far the pier was in the lake? A. I may have an impression, if I should state, I should say the length of the north pier must have been twelve hundred feet.

Q. Into the lake? No, sir, one thousand to twelve hundred feet from where it commences. It was quite an improvement.

Q. Is that an impression from recollection, or from what you have heard? A. From recollection.

Q, Were you on the south pier that day? A. I don't know whether I was or not.

Q. Did she strike the south pier? A. I don't know.

Q. Did you stay there until she was got in? No, sir, I went out simply to see her.

Q. What was the fate of her crew? A. I don't know: I never learned.

Q. Was she got off? A. I don't know, I didn't assist.

Q. Did you see any measures to get her off? A. No, sir.

Q. Was there any other vessel there to assist. A. No, sir.

Q. How large a vessel was she? A. I should think four hundred or five hundred tons. A square-rigged vessel.

Q. What color? A. I think, white color.

Q. Is that a positive recollection? A. No, not positive.

Q. Give a description of her? A. I only know she was a square-rigged vessel. I had a curiosity to see her, because a vessel was a very rare occurrence here and it was an object of interest to see it.

Q. It is impossible to remember now whether that was spring or fall? A. No, sir, I can't recollect.

Q. Can you fix the year? A. I can't positively.

Q. You can't fix whether it was in 1836 or 1837? A. No, sir.

Q. Can you tell by its being the same or the next year after

you came here? A. It may have been the same or the next year.

Q. Is there anything in the coming of that vessel or your observation of it, that helps you to fix the amount of the accretion? A. No, sir,

NICHOLAS SADLIER, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. When did you come to Chicago? A. In 1834, on the 25th of May.

Q. What were you first employed at, and where? A. I was employed by John H. Kinzie, about six weeks; I then went to the stone quarry on the south side, about three miles from Chicago, on the south branch.

Q. Were you in Chicago, about the 1st of August, 1834? A. Yes.

Q. Did you assist in putting down any cribs at the commencement of the north pier? A. Yes, I worked for Mr. Kinzie at the same time they put down the first and second cribs on the north pier. I assisted in putting in the second one.

Q. Were you there when the pile was driven? A. Yes, sir.

Q. Describe how it was done? A. Well, we commenced at the north side of the second crib, I believe; we drove two piles, and then slung the pile-driver around, and then drove two over there, and come back again and drove one on the south side of the crib, I think.

Q. How was the pile-driver brought up? A. The pile-driver was there when I got there at the south-side.

Q. You know the Shapley pile? A. Yes, it is what is called the Shapley pile.

Q. Which side of the pier was it? A. On the south side of the pier.

Q. [Presenting a map.] Is it? A. [After examining the map.] It is as represented on this map—it is on the north side.

Q. State what the distance was at that time from Shapley's pile to the shore west? A. I think about fourteen, or fifteen feet, probably sixteen feet—I guess it may be twenty—I can't tell exactly.

Q. Did you assist in putting in any other cribs? A. Not in 1834.

Q. Did you remain in the employment of Mr. Kinzie that year? A. Yes, sir.

Q Did you have occasion to go back and forth that fall? A. Not much. I went out to the stone quarry, and stopped at the quarry until November, 1834, and came back in November.

Q. Had any land been made in November, 1834? A. Not that I know of.

Q. There was not? A. No, sir, I believe not.

Q. When next were you there? A. In the spring of 1835.

Q. Were you employed on that pier then? A. I was not employed in the spring, but in the summer, in July, or the first part of August, 1835. We commenced to level up this north pier.

Q. What was your business? A. Framing timber.

Q. You commenced at the end of the pier to level up? A. Yes.

Q. At the time you began in August, 1835, had any land been made there? A. Not as I know of—I don't believe there had.

Q. If there had been any change from the condition in which you left it in November, 1834, to August, 1835, would you have been apt to notice it? A. I don't think there was any land made except it was a kind of a low place—a piece filled up—a kind of slough. It was not a slough, exactly; I used to get water there for Mr. Kinzie. It was a kind of a low place, about twenty-five feet wide and one hundred feet long. We used to go in there for water.

Q. Where was that? A. It was north of the first and second cribs. Sometimes it was pretty high water there, and sometimes none at all.

Q. Was this place there before the cribs were laid? A. I don't remember.

Q. How long did you continue working there on the pier in 1835? A. Until it froze up in the winter.

Q. From the time you first commenced until you quit in the winter, had any land been made there north of the pier, and east of the old shore line? A. There was some land made—very little of it.

Q. How much, and when was it? It was late in the fall, but I can't tell what month it was.

Q. What month did you quit? A. I didn't quit—I didn't stop work—we went out to the woods. We left about the middle of November, I think. At that time about twenty or twenty-five feet of land had formed east of the old shore line.

Q. No more than that? A. No, sir, I don't think there was.

Q. When did you commence work on that pier? A. In 1835 we commenced to work at the first crib, at the end there, at the angle.

Q. Was there any accident happened at the end of the north pier, that enables you to say that there was no land whatever more than twenty or thirty feet out? A. Tell me that again.

Q. Did you fall into the water? A. O, yes; I had to saw in there, in the timber, to level up. I had a kind of a broken machine, and I fell down into the water and filled my boots. I think that was the second or third crib.

Q. When was that? A. In September, 1835.

Q. How deep was that water? A. A foot or fifteen inches—just enough to fill my boots. That is all I remember about it

Q. Does that circumstance enable you to state that there had

been no more accretion formed than you have mentioned? A. You had better tell me that in common language, so that I can understand it.

Q. Is it the fact that you fell into the water, only a foot deep, near the second or third crib, that makes you say there hadn't been any land made there? A. There hadn't been any land made; but, you see, there was a kind of line, about four or five feet off from the second crib, that was filled up where the wind blew the sand up, and a kind of sand hill came out from the water, you see.

Q. Do you remember a violent storm that cut away the west end of the north pier, in the summer of '35? A. Yes; it was in the fall. I don't remember what day of the month.

Q. What damage did that do? A. Well, it didn't do much damage to the pier.

Q. What, to the ground around the pier? A. I don't remember.

Q. Did it wash out the sand? A. I don't remember. It didn't do any damage, except it took some of our timber off, and took it into the lake, and I went off for it, and was very glad to get it back again.

Q. Describe the stream of water that flowed in behind the west end of the north pier in that storm? I don't understand you.

Q. [Presenting a map and repeating the question.] A. I don't remember.

Mr. Arnold—Did it gully it out? A. I don't remember.

Q. Do you know of some cedar brush being put in the south pier? A. I don't know anything about it, only I saw some brush in the creek, and stone on the top of the brush. I can't tell what kind of brush they were; it was the second crib from the sand bar west, on the east side of the river; it was put in, and the stone on top. I fell in there once.

Q. The east bank of the river, and the west bank of the sand bar, was the place where you saw this cedar brush? A. Yes.

Cross-Examined by Mr. Fuller.

Q. Where did you come from to Illinois? A. From Michigan I first worked here for Mr. John H. Kinzie.

Q. Who did you work with on the pier in the summer of '34? A. Well, there was old man Jackson, and Morgan Shapley, and Jo. Chandley, and Jo. Slater, and Jacob Miller, and Henry Smith, and others. I can't tell their names.

Q. Do you remember Galusha Odell? A. No, sir.

Q. Samuel Brown? A. Yes.

Q. William H. Skinner? A. Yes.

Q. William and Morgan Burdick? A. No, sir.

Q. What was your business? A. I was a gardener in the first place.

Q. How much did you work on that pier the first year? A. I was on the pier pretty much all that year.

Q. But '34? A. I didn't work there in '34.

Q. How far out was the pier built in '34? A. I can't tell exactly, but about 500 or 600 feet, I think.

Q. How high? A. About the level with the water.

Q. Did you see it just at the beginning of winter, 1834? A. Yes; in some places it was about a foot high above, and some about a foot below.

Q. You are pretty sure it was not more than a foot above the surface of the water in the highest place? A. I am not pretty certain; it might have been a foot and a half.

Q. How far into the lake, east? A. About 500 feet.

Q. How long do you think it would be in the fall of 1835? A. About 1000 feet. There was three or four feet raised out of water. They built some about three timbers high out of water, and the first crib about two timbers.

Q. Who employed you? A. I worked for the government, directly, in 1835. I was framing timber.

Q. Did you assist in laying timbers in the crib? A. Yes.

Q. Where did you frame them? A. At the shore after getting them together.

Q. Which way from the west end of the pier? A. Pretty much all at the north side, in 1835.

Q. Were you there when they completed the sand crib and put it in its place? A. I was not there then, but I was there when they commenced driving piles. The first piles were driven at the south side.

Q. Did you ever see Shapley's pile? A. I don't know. The first I ever saw of it was on the trial.

Q. How many times have you testified in this case? A. This is the second time.

Q. Were you there all the time in 1835? No, sir; I was framing timbers and building cribs.

Q. When was the first new land made on the north side? A. In 1836 in the fall there was a great deal of new land made there.

Q. How much was made before that? A. Not much as I know of before 1836.

Q. How high was the pier above the sand on the north side in 1836; there was sand there? A. Yes, in some places three feet, some four and some two and a half feet.

Q. On which side of the pier was the water the deepest, when you put in the second crib? A. On the south of the pier.

Q. How deep was the water on the north side, right by the second crib? A. I should think two or three feet.

Q. Between the crib and the land was there more than room enough for your pile-driver to stand in? A. I don't remember.

Q. How did you draw up the hammer? A. By four horses. The horses stood on the pile-driver.

Q. On the boom? A. Yes, and travelled around.

Q. Didn't the pile-driver, as it came around north, fill up the space between the pier and the land, in 1834? A. I don't remember.

Q. How was it in there in 1835? A. Well, it was filled up about two feet high outside, I think, in 1836.

Q. How was it in 1835? A. In 1835, all I know is, that it was from twenty-five to twenty-six feet.

Q. What makes you think it was twenty-five or twenty-six feet? A. The first crib was about twenty or thirty feet long, and one end was on the water on the north side. That is all I can remember.

Q. Did the water flow through the west of the first crib behind it? A. Certainly it did.

Q. How much sand was east of that crib when it broke through, [presenting a map,] you say the water broke over there? A. No, sir; it came in through there.

Q. How much land was outside of that stream on that side of the pier? A. Well, it was about as far as this, I believe, [illustrating by the map.]

Q. This stream came over here? A. It didn't come through the pier at all, it just come up to the pier.

Q. How much land was outside of that stream or slough, on the east side towards the lake? A. Well, there was not much land there at the time.

Q. Was that stream there in 1834? A. Yes.

Q. Was it in 1835? A. Yes.

Q. How long was it there? A. Just 1835, that is all I know about it.

Q. When was your attention first called to the amount of accretion made in '34 and '35? A. The first time I went on there.

Q. But who asked you first about it? A. I never told anybody.

Q. Didn't you ever tell anybody how much land was made there until you came here to testify? A. I believe not.

Q. Did you ever tell Jackson here? A. No, sir.

Q. Shapley? A. No, sir.

Q. No one? A. No, sir.

Q. Has no one called your attention to the land made there in 34, '35, '36, '37, '38, '39 and '40? A. No, sir.

Q. Had you ever any interest to know? A. No, sir.

Q. Are you testifying from your recollection of your impres- on at the time? A. I don't understand what you say. Tell me n plain, common language.

Q. Was there any special reason for you to observe how fast

the land made there—any interest? A. No, sir—no interest—not a cent.

Q. How wide was this strip between the slough and the lake? A. Only a small batch. There was no slough at all. It was only a black stinking ———

Q. You wouldn't call it a slough, but how far was it from that place to the water of the lake? A. It may be a hundred or a hundred and fifty feet to the water of the lake, east of it.

Q. You are now speaking of 1834 or 1835? A. Well, it don't make much difference; it was in the spring of '34 and '35, both.

Q. How near was that slough to first or second crib? A. It came up, I believe to about fifteen feet of it.

Q. East or west? A. Well, they had been wheeling sand there before I saw it.

Q. How wide was that basin of water? A. Twenty-five or twenty-six feet.

Q. Could you walk along between it and the pier? A. Yes, sir.

Q. Did you say that pond was directly north of the second crib? A. I didn't say it was directly north; I said it was about fifteen feet.

Q. In what direction? A. Well, it was, I think, between the first and second crib; I am not very sure.

Q. How wide? A. About twenty-five or twenty-six feet.

Q. How far north did it go? A. Maybe fifty or sixty feet, or more.

Direct Examination resumed by MR. WILLS.

Q. You said that in the fall of 1835 there was land made, twenty-five or twenty-six feet east of the old shore line? A. Yes.

Q. Was this piece of water you have spoken of the old shore line? A. It was north of this line.

Q. Suppose the old shore line to be carried north, then how was it? A. It was the east side of this old shore line.

Q. Do you say there was land east of this water in 1834? A. Not as I know of. I don't believe there was any.

Q. Was there in 1835? A. There was some. There was a kind of corner filled up about twenty-five or twenty-six feet east of that water; that was about twenty-five feet wide at the middle and shortened off at both ends; that you call a slough, the middle of it was twenty-five or twenty-six feet wide.

Q. This land you speak of, twenty-five feet wide, was east of this water, was it? A. Yes.

Q. How wide was it? A. I'm not sure about that.

THE COURT.—Where was that twenty-five or twenty-six feet—opposite what crib? A. It was at the first crib, where they firs commenced, opposite that.

Q. Was the water you spoke of, back of that new-made land

A. I believe not, but I am not sure of it. I think the water was between these two cribs, about that. That's my opinion.

Q. Was there any land made, east of this twenty-five feet you have spoken of, in 1835? A. Well, there was some made, but very little, I can tell you.

Q. Does that twenty-five feet of land represent the land made in 1835? A. No, sir; there was none east of that I spoke of.

Q. I wanted to know whether that land run to the lake shore you spoke of? A. Yes, sir.

Q. It did? A. Yes.

Q. Was that basin of water, we have been talking about, there in 1834? A. Yes.

Q. Was it in 1835? A. Yes.

Q. In 1836? A. In 1836 it was filled up altogether.

Q. That was twelve or fifteen feet north of the second crib? A. Yes.

Q. How much land was east of that point of water to the lake in 1834? A. Well, about one hundred or one hundred and fifty feet.

Q. How much in 1835? A. Pretty much the same.

Q. Was there more or less in 1835, than in 1834? A. Well, there was more in 1835, a little more, than in 1834.

Mr. Arnold.—Did the lake shore strike the second crib in 1835, or, or was it east of that, or where? A. Well, sir, it struck at the second crib in 1835.

The Court adjourned until half-past nine to-morrow morning.

Fourth Day—Monday, March 27, 1860.

The Court met at half-past nine o'clock, and the jury being called, the trial proceeded.

JOHN H. KINZIE, re-called by the plaintiff, was further examined by Mr. Wills, as follows:

Q. When did you first become aware of any discrepancy between the original and recorded map? A. Several years ago. Mr. Jackson was the first that told me anything about it. I had never heard or knew of any discrepancy in the maps.

Q. You say that prior to the institution of this suit, you were not aware of the existence of any discrepancy? A. Mr. Jackson was the first that told me about it.

Q. In deeds or conveyances made by you, antecedent to this time, when you referred to the recorded map, what map were you referring to?

Objected to.

Q. In the deeds you made prior to that time, were you aware of this discrepancy?

Objected to—objection overruled, to which ruling defendant's counsel excepted. A. No, sir.

In discussion among counsel, it was said the witness did not know of any difference until '48 or '49.

Witness—I didn't say '48 or '49. I didn't say what time. Mr. Jackson was the first that stated this fact to me.

Judge Morris—I would like to ask whether Mr. Jackson made the remark at the time he called to get the original, to have it recorded?

Objected to—objection overruled. Defendant's counsel excepted.

Witness—Mr. Jackson called to get the map, I believe.

Q. For what purpose? A. He spoke of some—that it was incorrect.

The Court—You need not state that. It is not proper.

Q. State the time when this fact of the discrepancy first came to your knowledge?

Objected to—objection overruled. Defendant's counsel excepted.

Witness—The time I first knew it, was when Mr. Jackson told me—was from Mr. Jackson. He called in, I believe, for the original map, and told me about this discrepancy.

Q. No matter about what he told you. What time was that? A. I couldn't say exactly. It had reference to the suit. It was about the time he was to commence the suit.

Judge Higgins—About the time this suit was commenced? A. About that time.

Judge Morris—Was it not about the time he got that map to have it recorded? A. It was in reference to that.

Q. Did you give him the map for that? A. I gave him the map, I believe.

Q. The date shows that was July, 1847. That was your first notice? A. That was the first time. There was a new map, I believe, made.

Judge Higgins—That was about the time Bushnell's map was made? A. I don't recollect when that was made.

Mr. Wills, for the plaintiff, offered in evidence a certified copy of the field notes of the original government survey of the land in question, made in 1821, fixing the boundaries, &c.; also, a certified copy of the field notes of the subsequent survey of the sandbar, etc., made by Edward B. Talcott, Government Surveyor, in the winter of 1837.

Mr. Fuller objected to the latter, on the ground that it had been rejected by the department, at Washington, and was, therefore, a unauthorized and rejected work.

Mr. Lincoln objected that the former document was irrelevant which objection was overruled; objection to Talcott's survey pending, plaintiff's counsel stating that Mr. Talcott, himself, would be called to prove the map, etc.

SAMUEL S. GREELY, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. [Presenting Greely's Map, No. 1.] (Ex. F.)—Look at this map? A. That map was made by me, in 1858. The surveys, so far as made by me, were made in '57, as well as '58.

Q. How long have you been engaged as surveyor, and what was your official position at the time? A. At the time of making the surveys, I was city surveyor. I have been surveying for twelve or fourteen years. This map was made in September, '58. The surveys were mainly in '57; part of them were in '54, by the way.

Q. State where you began your surveys. Taking the government survey, what had you to locate the original bed of the river, according to the field notes of the original government survey?

Objected to. Objection overruled; defendant's counsel excepted.

Q. How did you proceed, and what date had you? A. This map was made for the purpose of showing the position of the piers and the Illinois Central Railroad works, in reference to lots 31 and 32 of Kinzie's addition. I first traced the west line of 31; produced it across the river down to Randolph street; surveyed the accretion, above the pier, and the south pier; located the angle in the pier; the position of the straits in Fort Dearborn addition; the east line of Fort Dearborn; the old fort and its inclosure. Then I put on the government notes of the meander, made by Wall in '21, of the Chicago river, and of the lake shore, as far as the map went here, and I put on the rest of the water lots of Kinzie's addition; the shore line, as shown on the record map of Kinzie's addition, and the same as shown by what was called "Original Map."

Q. Where did you commence? A. On North Water street, at the corner of water lots 30 and 31 in Kinzie's Addition. That was in 1834. After that, in 1857, the old pier was being removed by the city. At that time I was City Surveyor, and measured the work—the excavation—and made estimates of the removal of the pier, from time to time, and the progress of that work, as shown here.

Q. Show from this point the way in which you arrived at the location of that river? A. I connected the survey made in 1854–7, with the section line on State and Madison streets, by actual measurement. I had then laid down, on this map, the government survey from the same section lines. Here at this corner of the map, is the southwest corner of fractional section 10. The distance given by the government notes, from that to the corner of sections 10 and 15, on the lake, is given as seventeen chains and thirty links; then he crosses over again, up to what is called the lake shore, in the field notes. I found, on the examination of these notes, that the survey did not close, and that a

change of two of the courses on the lake shore, from northwest to northeast, would make them close. The notes as given with the copy of original, I find, would pass directly throught Fort Dearborn itself. It would pass through the buildings which had been built before the survey was made. It therefore appears that the original notes were inaccurate in that respect. A change in these two courses, from N. 4° W. to N. 4° E., would pass outside the fort, and would make the whole survey of the south fraction consistent with itself. The notes, or the survey, would close; without it, it would not by some two hundred and twenty-five feet. The making of that change connects the meanders of the river, south here, with the meanders west, and all west of south fractional section 10.

Q. Did you calculate the area here and find it was necessary to make the correction in order to arrive at the quantity stated in the survey? A. I don't recollect. I made a traverse table of it in order to plat it by and see how near it would come to closing. I don't remember whether I made a calculation of one or not, but the notes show in the plat a traverse table, whether they connect or not. They don't connect as written, but they do connect with this change. The change was in changing the second course by the lake shore, from N 4° W to N 4° E, and the third course from N 5° W to 5° E. They run a little west of north, and the change takes the same degree and throws it east and north.

Q. How do you arrive at the location of the fort and the location of the fort buildings? A. Those are put in from maps furnished by Col. Graham. One of those buildings was standing at the time; in fact it was standing until within three or four months. That building was located here by actual survey. That is on the southeast corner of Michigan avenue and Water street.

Q. Is it there now? A. No, sir, it has been removed within a few months.

Q. State whether this portion of the south pier, east of the old Fort, and as far west as the Illinois Central Basin, was taken up under your direction as City Surveyor superintending. A. Yes, superintending it merely as far as the work went.

Judge Higgins—What portion?

Mr. Wills—That portion of the south pier lying south of the old Fort, and extending east as far as Illinois Central Basin.

Q. State whether, previous to its being taken up, you found any piles south of the north pier, and whether you located them. A There are four piles located here by actual measurements by myself, and put on the map. They are outside of the pier, immediately against the outside of it. [Pointing them out on the map.

Q. Was anything particular noticed on the south side of the south pier when it was taken up? A. A construction was found by the men having charge of the dredging, to which my attention was called at the time, projecting apparently from the sout

side of the south pier. I noted it at the time as being, I think, twelve feet west of the little brick depot of the Michigan Central Railroad—twelve feet west of the line of the east side of it.

Q. Describe it. A. I saw, myself, only the fragments taken out. They were reported to me by the men. I simply saw fragments of timber removed.

Q. Describe its size. A. They were ten and twelve-inch sticks of pine, if I recollect, and had been broken in removing them.

Q. What was your object in going down to see these things? A. The man in the charge of dredging sent for me, stating that he had found this construction south of the pier, and desired me to look at it, and looking at the position of it, to say what it was.

Q. Is the position of it, as surveyed by you, correctly laid down on this map? A. Yes, sir.

Q. The position of this buttress crib? A. Yes, sir.

Q. It extended south at right angles to the pier? A. Not quite at right angles—it was a little oblique to the east of a right angle.

Q. In regard to that angle [pointing to the map], was it fixed by you? A. That is an angle in the pier as it existed at that time, in 1854.

Q. You surveyed it, and located it from that survey? A. Yes, sir, that was my survey.

Q. State the position of the angle in the south pier thus fixed, in reference to an angle on the north pier. A. I have no direct knowledge myself of the angle in the north pier. I don't recollect it, except that they were taken as parallel.

Q. The piers in this map were made as parallel to each other? A. It was got by making that pier parallel with this, and two hundred feet from it.

Judge Morris—State where these points are, so that the Reporter can get it. A. I can give the distance from the angle to this construction.

Q. Is it not on the blue line purporting to be the east line of the river? A. Yes, sir. This buttress crib is in the east shore, as made at the time, and as laid down on the plat.

Q. State how you got this east line.

Objected to, and deferred until after Mr. Talcott's examination.

EDWARD B. TALCOTT, called by the plaintiff, being duly sworn, was examined in chief, and testified as follows:

Q. State whether you were at any time authorized by the Surveyor General, at St. Louis, to make a survey of a piece of land, south of the south pier, known as the sand bar. A. I was, sir. That was sometime in the winter of 1836, I think.

Judge Higgins—Were those instructions in writing? A. Yes, sir. I haven't a copy of them, sir.

Mr. Lincoln—Have you the original? A. No, sir.

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Judge Higgins—Were those instructions in writing? A. Yes, sir. I haven't a copy of them, sir.

Mr. Lincoln—Have you the original? A. No, sir.

Parol evidence as to these instructions objected to. Objection overruled.

Q. [Presenting a document.] Look at these field notes, and say whether these are the field notes of the survey made by you, and returned to the officer at St. Louis. A. [After examination.] It is a hard matter for me to say, at this length of time, whether this is a copy or not, but I presume it is. It purports to be, and I suppose it is. I remember the work very well, and I remember the peculiarities of the courses and distances here, from which I have no hesitation in saying it is.

Mr. Lincoln.—You remember that survey. Didn't you once say it was the coldest day that ever blew? A. I think it was the coldest day I ever went out on a work of that sort. There were some plats accompanying the field notes.

Q. [Presenting a plat.] A. I might state that with my instructions from the Surveyor General in St. Louis, to survey a certain sand-bar, he furnished me a plat of section 15, with the original field notes of surveys made by the United States Surveyor, which were to be my guide in tracing the outline of the original survey, and I was to make a survey connected with the original survey, I recognize this plat as being, I should say, the plat of the ground which was furnished me, and this shaded part, as the part I surveyed. It all looks very familiar to me.

Judge Higgins.—When was this survey? A. My impression is, this survey was made in January or February, 1836.

Q. That survey then was made on the basis of the field notes of the original government survey of this land, furnished you by the St. Louis office? A. Yes, sir.

Q. In getting the east line of the sand-bar, did you run your lines in the water, or on shore? A. I ran them at the water's edge—just at the edge of the water, at the time I made the survey. The water fluctuated in the lake, as every gentleman knows who is familiar with it—sometimes higher, sometimes lower.

Judge Morris—Were some of your lines in the water, and some on the land? A. No, sir; I traced the line between the water and the land as accurately as I could determine.

Q. According to the field notes of that survey, I find an angle called for here in the south pier? Yes, sir, I remember the angle very well.

Q. Describe how you began with your survey, and how you ran it around? A. Well, I can't remember; the field notes will describe that, however.

Judge Higgins—Are these the original field notes? A. No sir; these are a copy, I take it for granted, of my notes.

Court—What became of your instructions? A. I retained them among my papers for many years, and when I removed from Missouri to this State, I believe I destroyed them, believing them to be of no further account. I have had occasion, in connection

with another suit in this Court, to search over my old papers to find my original instructions, and I couldn't find them. I think they are lost; I think I burned them up.

Court—That was a survey made in pursuance of these instructions? A. Yes; and I returned the survey, with the filed notes, to the Surveyor General at St. Louis, in accordance with my instructions, and was subsequently paid for the service by the Surveyor General. The certificate of the Surveyor General is on the first page of this, and it is under the seal of the office. The field notes describe the process of the survey in detail.

Mr. Van Arman—Where did you commence the survey? A. [referring to the field notes] I state, in my report to the Surveyor General: "The mound being destroyed at the corner of fractional sections 10 and 15," which is here; "I therefore commenced at the corner sections 9, 10, 15 and 16," which is here, [pointing]; "from thence north one chain, as an offset to avoid fences and buildings; thence seventeen chains and thirty links east, on this line, [pointingit out]; "thence one chain south, where I set a post for the original corners of fractional sections 10 and 15, which stands at the edge of the water in the old channel of the river." I suppose that is here.

Mr. Lincoln—That would be the lake shore as well as the river bank? A. Yes, that would bring us to the original mound. That brought me to the point which the original survey designated as the corner between these fractions.

Mr. Lincoln—And which did actually bring you to the edge of the water? A. Yes, at that time it was here. "Thence continuing the section line east one chain and sixty links," which was the east side of the old channel of Chicago river; "thence four chains and seventy-four links," which was on the sand spit, "to the shore of Lake Michigan, at the ordinary stage of water." These are the courses and distances here. After I got across the river, it was four chains and seventy-four links across the sand-bar at that point, the center of Madison street. "Set a post in mound for the corner of fractional sections 10 and 15, from which the south-east corner of a house, owned by George E. Walker, bears N. 58° 30′ W. 121 links distance; and the N. E. corner of a house, owned by James Kinzie, bears 52° 45′ W. 131 links distance; thence, commencing at the original corner of fractional sections 10 and 15 (as established), the meanders of the lake shore, according to the original field notes; thence 12 chains N. 2° W." Then I made an offset of one chain, east, to avoid buildings, which is not shown here. "Thence two chains 50 links N. 2° W.," which brings you to this point. Then I offset back one chain west, for passing that building; thence eight chains twenty-nine links on a course N. 4° W.; thence eight chains twenty-six and a half links N. 5½° W.; thence one chain E., offset to avoid garrison buildings."

Q. Would the original course, as laid down in the field notes, have carried you through the Garrison buildings? A. Yes, sir; I subsequently ascertained that this course of N. 2° W. was wrong. It should have been N. 2° E.

Q. How did you ascertain that fact? A. During subsequent years, being connected with the Illinois and Michigan Canal, I had occasion to trace the meanders here for the canal, and I sent to the Surveyor General's office for a copy of the original field notes of Chicago Township, in which the city of Chicago is situated; and in looking over them I subsequently discovered that there was an error in the map given me by the Surveyor General. That error is shown on this map by these two diverging lines. My survey includes that amount, which you see, more than it should have included in the sand bar; but, at that time, I had nothing to guide me, except the Surveyor General's notes. They had written W. instead of E. That's why this line is represented here.

Q. Proceed with your survey? A. Thence to get by the Garrison buildings, we went five chains and eighty-six links on a course "N. 5½° W. to front of south pier, [pointing it out.] The termination of the west course, and distance according to the original notes falling within the pickets of the Garrison, it was, therefore, not regarded, but the course continued to the dock on the offset line. [Indicating it on the map.] Thence five chains S. 75° E., along said pier, west side of Chicago river, thence five chains and seventy-nine links to an angle in the pier."

Q. That is the angle we have been talking about? A. Yes. "Thence one chain and thirty-seven links S. 46° 30′ E., west of old channel of river."

Q. You cross from the north to the south side? A. Yes. There was a slight angle in the pier here, as it stood at the time, in consequence, as I was informed——

Q. Never mind that? A. I found an angle or jog, as it may be termed, in the pier. I found the fact there. There was an angle there.

Q. You came to the south side—go on? A. "Thence three chains and forty-seven links S 80° 30′ E. to a post in the south side of south pier, on which three notches are cut in the direction of the line running therefrom. Thence along the shore of Lake Michigan, five chains and ten links S. 12° 30′ W.; thence seven chains and eighty-nine links S. 5° 35′ W.; thence twenty-one chains and thirty-three links S. 5° 5′ W. to the corner of fractional Sections 10 and 15 as recently established. Survey of sand-bar adjoining fractional Section 15 commences at the original corner of fractional Sections 10 and 16, and meanders south according to original field notes. Thence nine chains and seventy-four links S. 2½° E.; thence twenty-two chains and fifty links S. 7° E., to the edge of the lake; thence one chain and fifty links east to shore of

Lake Michigan at the ordinary stage of water; thence seven chains N. 0° 25′ E.; thence three chains and seventy-five links, N. 19° 15′ E.; thence six chains and ninety-nine links N. 0° 35′ W.; thence four chains and forty-five links N. 6° 40′ W.; thence nine chains and ninety-eight links N. 0° 10′ E., to the corner of fractional Sections 15 and 10 as recently established."

Q. Then this line of the east shore of the sand-bar was run by you on the edge of the water at the time of the survey? A. Yes, not in the water, but as near the line between the land and the water as I could determine.

Q. At the time of this survey, had there been a pier run out by the Government? A. Yes, sir, running east from there into the lake. Both piers were built, to some extent, from that point.

Q. Did you notice any angle in the piers? A. No, sir, not from the east. The pier was on the same line with this course, here from that point east. There was but one angle in the pier, and that was where the line crosses.

Q. Are you certain about that? A. Well, I passed over it and saw no angle. There might have been a very slight angle.

Q. But none so marked as this one? A. No, sir. There may have been a very slight angle, but nothing observable so that my particular attention was called to it. I know during 1835 I used to promenade over that pier very often.

Mr. Fuller—Which pier was it, you went over in 1835? A. The south pier.

Mr. Lincoln.—These distances are all noted, are they not? A. I began there, [illustrating by the map,] and measured the distance there, which the government gave in their original survey.

MR. LINCOLN.—That brought you right, and this point here was the actual water's edge? A. Yes, the shore was not the same then, because the shore had been washing away rapidly.

MR. LINCOLN.—I asked whether that brought you to the water's edge? A. Yes, where the water was at the time the original survey was made.

Q. The line was not the same, or had not the same length? A. Yes, sir, the same line and the same length.

Q. Then I cannot understand how they were still identical? A. They were the same but the lake shore was not the same. It is presumed the government did not go to the water's edge.

Q. Give us your own knowledge? A. This I will say, not from my positive knowledge, but from reason and analogy, because I saw the lake shore washing away, day by day myself, and I know it had gone away several feet, to my knowledge, before I made this survey in 1835.

MR. LINCOLN.—The government line lacked a little of the water, but came exactly to your survey? A. Yes, this mound being gone, which the government in their survey describe, I was compelled to go back to this corner, which was next, and measure the

line through, on the course and distances given by the government, and when I got that distance it brought me exactly to the water's edge of the river and line of the government survey.

MR. LINCOLN.—Was it not the river and lake shore both? A. No, sir, the sand-bar was in front.

MR. LINCOLN.—Was the sand-bar the bank of the lake, or was the shore this way from the bank of the lake? A. If I might infer, independent of the government survey ——

Objected to.

Witness—That course and distance is on the line, as laid down on the government survey, but unquestionably it was back of the water. The action of the lake had been washing away the main shore here, and forming this sand-bar down here, at the same time, [illustrating by the map,] and the two were going on simultaneously.

Cross-Examined by Judge Higgins.

Q. How early did you come to Chicago? A I landed here in May, 1835.

Mr. Arnold objected to any questions not in reference to matters elicited in the examination in chief. Objection sustained.

Q. You stated that at the time you surveyed this line of the lake shore, it extended to the water's edge? A. Yes, sir, I made that, as near as I could decide between the land and water.

Q. That was in January or February, 1835? A. The notes will show the date. The oath of the chainman was made February 24, 1836. My recollection is that I made the survey on the same day.

Q. This was the line of the lake shore, east of the sand-spit? A. Yes.

Q And you say several feet, to your knowledge, had worn off there? A. No, sir; I spoke merely of this corner, in explanation of Mr. Lincoln's question. That what was considered the lake shore, at the time the government made the survey, had been gradually carried away by the waves. They had a burying ground along there, and the old coffins were sticking out of the sand. That I saw.

Q. How far did it wash? A. I could not form any opinion. Several feet, sir. I have been on the lake there and seen it break off, but I can't form any opinion as to the extent of that abrasion.

Q. From what quarter did the water come? A. It seemed to come around the end of the pier. I can't state the distance the pier was extended beyond this bend, but it formed an eddy around the pier and the northeast storms would drive the water around there with great violence upon this bank.

Q. Did this bar interpose any obstacle? A. Yes, sir, somewhat, but it was low.

Q. How low? A. I could not pretend to say, for I took no levels, and it would be recollection. I suppose that the highest

point of it was three feet high at the time I made the survey. The lowest point was down at the water's edge—it was very gradually shelving off, like any sand-bar of this kind. At the time of any sea or storm, it broke over the sand-bar entirely, and made an inroad upon the shore, inside or west of the river, between the river and Michigan avenue. Several feet had worn off there in '35 by the action of the lake—the lake rolling over this bar in high water.

Q. You state these piers were parallel with each other, or nearly so? A. Yes, I supposed so. I judged it by the eye.

Q. There was no angle observable east of the east bank of the river? A. No, sir. No one except this one. [Pointing out the one before alluded to.]

Q. You were very familiar with that pier? A. Yes, sir, I passed over it frequently. My object in passing over there was to get a good healthy breeze. After working hard all day, I frequently walked down there, and on Sundays.

Q. When did you come? A. I landed the last of May, 1835. I came by the brig "Indiana."

Samuel S. Greeley re-called by the plaintiff, was further examined by Mr. Wills, and testified as follows:

Q. [Presenting Greeley's map, No. 1.] (Ex. "F.") In regard to the Talcott map, state if it is correctly laid down on that map, according to the field notes of the survey? A. Yes, sir, it is—starting from the corner of the four sections, 9, 10, 15, and 16, and running east the distance given, on the government survey; then crossing the old channel of the river, according to Talcott's notes; then crossing the bar, and following the lake shore on the east side of the bar, up to the pier, and then westwardly.

Q. State whether the east line of the sand-bar, as surveyed by Mr. Talcott, strikes the place where you located the angle in 1834, which you spoke of before? A. It does, sir. It goes to that point, the angle—it is a slight angle found in the old south pier in 1854, on the east shore of the sand-bar, according to Talcott's notes.

Q. That is the angle you located in '54? A. Yes. The angle is not mentioned in Talcott's notes, but the points coincide, and platting them in my map, I found they came to the angle, as previously located by myself. His notes I followed across the bar. Here is his offset—he begins here, and runs northeast; [illustrating by the map;] here he offsets, to avoid the fort building, and runs farther north, in a parallel course, north to the pier; thence to the angle noted here; then southeast, I think he says, to the south side of the pier; then along the south side of the pier, and down the lake shore. This is platted precisely from his notes.

Q. Is this Kinzie's Addition survey platted by you from actual survey, as connected with these surveys by Wall and Tal-

cott? A. It is. I traced the line between water lots 30 and 31, south to the water, and then across the river, down as far as Randolph street; and then measured from State street, connecting with that line on Water street, and Randolph street—so that I have the connection of the water lots of Kinzie's Addition, with the south fraction of section 10, and with Talcott's survey.

Q. Were these fort buildings here located from Gamble's survey? A. By Mr. Gamble and Col. Graham; taking the building which was then standing as the common point of the three surveys—the other buildings having been removed, I located all their surveys.

Q. What is that? [pointing.] A. That shows a deep hole in the old channel, as testified by Mr. Gamble. It is not a part of my own knowledge—I located it simply from a statement of Mr. Gamble. The cottonwood tree and the Kinzie house are located by statements made by John H. Kinzie.

Objected to—objection sustained.

Q. Is Pine street and North Water street laid down correctly? A. They are laid down correctly, and in connection with the water lots.

Q. State what "Greeley's Map, No. 2" is? [Presenting the same.] (Ex. G.) A. That is the north portion of No. 1, enlarged, made on double the scale of the other, in order to show things more distinctly. The scale of the first map was one hundred and fifty feet to the inch—This is fifty feet. This line is the government meander by Wall, the same as the other, the south and west side of the river, and the south fraction of section 10.

Q. What is that line? [pointing.] A. That is a line taken from Capt. Allen's map of 1837, indicating the east line of the marshy grounds. Here is a line showing a portion of the old sand bar remaining in 1837, as shown by Captain Allen's map of that date. Here is the line of Talcott's survey, taken from his notes, and identical with the other map.

Q. What is that point? A. That represents a portion of the pier remaining February 28th, 1858. At the east end of the pier is a place reported to me by the contractors, as the place where they found brush and other materials under the pier, in removing it. They also made me a report of the different depths of the crib work taken up for an estimate of their work—that was taken from the men to make the estimate.

Objected to—objection overruled. Defendant's counsel excepted.

Q. You were City Surveyor, measuring the amount of the excavation? A. Yes, sir—only so far as quantities are concerned. I made the estimate on which Mr. Green was paid for doing the work.

Defendant's counsel objected to any testimony from this witness,

as to the statements of Mr. Green, or others, concerning the pier, brush, &c.

Plaintiff's counsel stated that they were prepared to follow this up, by Mr. Green and others, employed upon the work.

The Court—He may state if he put down any land mark on the map, at the representation of any person, if the plaintiff propose to follow it up by the evidence of the party making the representation.

Defendant's counsel excepted.

Q. How was this profile view of the river bed made? A. I can't state that without stating what Mr. Green told me in connection with the work.

Q. You made it upon data furnished by Mr. Green, did you? A. Mr. Green stated to me that the deepest portion of this pier was here; this part, in the deep part of the river, was the last portion which he took up, which was the only portion remaining after the spring of 1858; the portion remaining at that time I noted here, because I estimated it myself, in order that——

The Court.—I don't think that is competent.

Q. Was this part of the profile view made from data furnished by Mr Green, whether it is correctly laid down or not? A. Yes, that, in connection with my own measurement. I measured this because I had to connect these together; if it is not excluded, I will say that Mr. Green told me that this was the deep part.

Q. State what you did or made in consequence of what he told you? A. I made this profile view of the river bed in consequence of what he told me.

Objected to. Objection overruled; defendant's counsel excepted.

[The witness here passed around to the jury, and repeated his explanation of "Greeley's map, No. 1," pointing out each locality to the individual jurors]

Q.—[Presenting "Greeley's map, No. 3."]—(Ex. H.)—Look at that map, and see whether it was made by you? A. Yes, sir, it is made by me, from surveys made by me last October. The map is dated October 15, 1859.

Q. State what you did, and what it represents? A. This was the survey representing the accretion in Kinzie's Addition, north of the north pier, [unrolling the map and exhibiting it to the jury.]

Mr. Lincoln.—It looks very much like it represented a fancy bed-quilt.

Witness—Sand street, or St. Clair street, was the most easterly street in Kinzie's addition. I traced that south to the south side of North Water street; then I produced the south line of North Water street, eastward, to the point where I could run down this way. This land was incumbered with wood and coal, so that I could not get directly to the pier; but I got out eastward till I

could get to the pier; then I followed the pier out to the water's edge—the lake, last October; then a line along the lake, defining the water's edge, as far as the north line of the north fractional section 10, on Chicago avenue.

Mr. Van Arman.—That is, you ran around it, substantially? A. Yes, sir.

Q. State whether you made a sub division of this accretion upon various bases; and whether this map correctly represents that sub-division? A. I did, sub-dividing the water front, as shown on that map, in three or four different ways. First, the pink stripes represent the location of the streets, with their proportion of the accretion, if the "pier shore line" is included in the line of accretion. I estimated the original shore line down to the pier, and added, by my measurement, the present shore line to it; to which I added the length of the pier; then I divided the sum of these two in proportion to the front of each block, and the width of each according to the original map; the red stripe shows these proportions. Here, for instance, is Indiana street, seventy-four and a half feet wide; this slants a little; its proportion of the whole accretion would be as shown by the end of the red stripe here. The red stripes show the location of the streets, if you take in the pier, in reference to the accretion; and so you will find the whole extent between the blocks of Kinzie's Addition.

Q. Throw out the "pier show line? A. The blue stripes represent the location of the sand if the pier shore line is excluded. If I simply take the distances from the north side of the fraction to the pier, and divide that among the owners, *pro rata* according to the fronts on the lake, according to the original plat, it will give the result. I get the position of the streets, by the blue lines, and the position of the blocks by the white space between the blue lines.

The defendant's counsel objected to this evidence in reference to a division of the ground, and to the introduction of this map in this manner, no mounds having been established. Objection overruled. Defendant's counsel excepted.

Judge Higgins inquired if it would be necessary to make objection to each question.

THE COURT.—Oh, no, sir.

Q. State in general, does your map show what the division would be *pro rata* according to the original shore, on these different bases? A. Yes, sir. This is estimated in three or four different ways. In the first plan, including the piers front shown by the pink stripes; second, excluding it shown by the blue stripes; third, to produce the streets straight out, with the exception of North Water street, which, if produced, will strike Illinois street; these dotted black lines represent the prolongation of the streets east in continuation of their original direction,

North Water street. These intermediate stripes represent the portion of the accretion, which would be due to the proprietors of each of the water lots and blocks of the original front, according to these different bases of sub-division. The facts are stated here. The shaded yellow represents the shores of the water lots, if the streets are continued in the original direction, that as in the third case above—that is, carrying them straight out.

Q. The proportions are correct from the data, are they? A. Yes, sir, from the data given.

Q. [Presenting Allen's Map, of 1838.] Look at the accretion at the north side of the north pier, and tell me whether the ratio of increase between what is represented there as having been made there in '34 and '37, and what was made from '37 to '38, calls for any accretions made in '34 and '35, and if so, to what extent and in what year?

Objected to by the defendants' counsel, on the ground that the maps were inadmissible, and if admissible, such a question would not be competent.

Mr. Wills stated that the maps were already in evidence. The plaintiffs now propose to make them the bases or data of a calculation to be made by Mr. Greeley, in reference to the extent and progress of the accretion.

THE COURT stated that the maps had been admitted and allowed to go to the jury as illustrative and explanatory of the accompanying reports and the testimony; but the plaintiffs' proposition, to ask Mr. Greeley for a calculation in reference to the progress of these accretions, based upon Allen's Map, was excluded; to which last ruling the plaintiffs excepted.

Cross-examined by Judge Higgins.

Q. You stated that there was a small angle in the south pier, near where the east line of Talcott's survey strikes the pier; did you notice any other angles going east on that pier? A. I didn't examine for any. I ran a very little ways, if any at all, there—it was merely to get some crib work; as I recollect the angle—it is eleven or twelve degrees—it is precisely as shown here.

Q. Is that the line in which the original pier ran along there? A. Yes.

Q. And then shifts here? A. Yes, to the north—I think it is eleven degrees.

Q. Do you know where Mr. Green took up some crib work east of either of these angles, out in the lake? A. No, sir. He took some at the entrance of one of the little basins, but I had no connection with it.

Q. Where was the second basis on this map? A. I never located it, and I don't know the distance.

Q. Where is the first slip? A. I think the first one is twenty-seven feet from the line of this building. Along further east there is another one.

Q. What is the distance from Talcott's east line to the entrance of the second slip? A. [After measuring on Graham's map, G. 52.] It is two hundred and eighty feet from Talcott's east line of the sand-bar, east to the west side of the entrance of the second basin.

Q. How far would it be from the line north and south dividing 34 and 35, if that line were extended across the river and piers? A. If you want it south, parallel with the section line, I ought to have a square and rule to get it?

Q. Approximate it? A. [After measuring with one instrument on Greeley map, No. 1.] I suppose it would be about there. It is one hundred and fifty feet from a line drawn due south of the south end of the boundary between 34 and 35, east to the entrance to the east basin—one hundred and fifty feet.

Mr. Wills.—Or thereabouts? A. Yes.

Q. Run the line between 34 and 35, directly to the pier and how then? A. Somewhere within twenty or thirty feet of that. That is as near as I can judge by the eye.

Q. How early were you here? A. 1853.

Q. You know nothing about this earlier than 1853? A. No, sir, nothing earlier than 1854.

Q. For whom did you make the surveys at that time? A. For Mr. John S. Wright.

Q. He was a party claiming against the Illinois Central Railroad? A. I so understood it.

Q. He and Mr. Wills? A. I didn't know Mr. Wills then.

Q. You surveyed lot 31 as far south as Randolph street? A. Yes, sir; I took one of the lines of 31 simply for the purpose of getting the north side of the——

Q. Never mind the reason? A. I took it simply because it was clear out there. My impression is, it was to the line of Randolph street. I cannot say without my field book.

Q. All this ground was subject matter of litigation at the time of the survey? A. Yes, sir, I presume so. I didn't know myself.

Q. Did you survey on the ground all the way? A. I ran on the pile work, and other things I could get in the Illinois Central ground along here.

Q. Where was it? A. I could not tell by this map. I could tell you by my field notes. I can give you the history, if you want it.

Q. That is all land now? A. This is quite a large tract of land here.

A. A portion of this you did survey, across the slips here? A. The slips were not formed at that time, I think.

Q. According to this map the river never ran far enough to strike 27? A. It just touches it there—it just touches the line of 27. This is shown as the east shore of Talcott's survey, in Febru-

ary, 1836. He gives five chains and seventy-seven links to the east shore of the river. I based this on his survey; I had no other data to go by.

Q. That was after the pier had been put across here, and was partially filled? A. That I don't know, because it was ten or fifteen years before I came here. I merely put down Talcott's survey upon request of the parties.

Q. This line, as laid down here, would make the bank of the river just touch the west line of 27? A. Yes, sir.

Q. In your enlarged map it does not quite do that, does it? A. I have not compared them, [examining Greeley's map, No. 2.] It seems to come in about the same relation to it.

Q. The west line of 27 would just cut the east bank of the river? A. Yes, sir.

Q. Were there any other angles in the pier, eastward, when you surveyed it? A. I don't know, sir. I didn't survey any further east.

Q. You have no personal knowledge upon this subject, except as you surveyed it, as instructed by Mr. Wright, and the other parties who brought suit against the Illinois Central? A. Well, part of the facts were apparent on the ground, at the time, as the pier, the depots, &c.; but other things I have no knowledge of, except as I took it from information.

Q. You think the buildings are properly located on this map? A. Yes, in reference to the pier and the section lines, and the lots of Kinzie's Addition. These I know, because they were located by myself. The other parts are from representations made by others.

Q. You have no knowledge of their correctness, except that they were stated to you? A. Yes, a part I surveyed.

Mr. Wills.—You had the Government survey? A. Yes, this I put down from the notes

Q. [Presenting Thompson's copy of the original May]—(Ex. "B.") According to this map, which purports to be a copy of the map made in 1833, is not lot 27 cut entirely off by the river? A. Yes, sir, quite half of it.

Q. How much further east does it extend, by this map, than by the map you have introduced? A. It's between ninety and one hundred feet.

Q. The river, then extends between ninety and one hundred feet further by Thompson's map than by Talcott's survey? A. Yes.

Q. By the original plat, how much further does the river extend east, than by the map you have introduced here? A. Just the same as that [Thompson's], I think.

Q. I want to show that the original map is precisely like Thompson's copy? A. The two maps are substantially the same.

Q. Then by both the original and Thompson's copy, the river

extended from eighty to ninety feet east of what it appears on these [Greeley's] maps? A. Yes, from ninety to 100 feet. [The witness passed around to the jury, and explained this difference in the maps to them, individually.] It extends about ninety feet further on this copy and the original map, than as shown by Talcott's survey. It cuts off about half of 28, or more than half way, and it cuts entirely through 27, being about ninety or one hundred feet further than as shown by Talcott's survey.

Court took a recess of twenty minutes.

ERASTUS BOWEN, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. You reside in Chicago? A. Yes, sir.

Q. How long have you resided here? A. Twenty-six or twenty-seven years. I came here in June, 1833.

Q. Was the south pier commenced when you came? A. No, sir, it was not.

Q. Where did you live? A. By the lake shore; I lived at the east end of Water street, on Michigan avenue.

Q. Your lot extended to the water? A. Yes.

Q. Do you know how the south pier, upon the bar, was constructed? A. Yes, sir, I know something about it.

Q. Where was the river, bar, etc.? A. Well, the river was west of the bar, between that and the garrison. There was a low marsh on the west side of the river, between that and the fort, at the old bastion, on the northeast corner. There was a marsh about fifty feet.

Q. Did the marsh come to the bastion? A. No, sir, I should judge there were about fifty or sixty feet from the corner where the bastion stood, a little out of the main line of the pickets. There was a bastion on each corner, and that bastion probably stood two-thirds of its size from the corner.

Q. [Presenting Allen's map of 1837.] (Exhibit C.) This is the marsh referred to in front of the fort? A. Yes, sir, here's the marshy ground, the old fort, the bastion I spoke of, also another bastion that projected; this is the old block-house. I should judge it was from fifty to sixty feet from this bastion down to the marshy piece of ground, and then the marsh extended may be two hundred feet, where the grass grew, before it came to the river. Then came the river, then the sand-bar, then the lake shore.

Q. Were any piles on the south side of the pier by which you could see where the river was? A. Yes, sir, there were some piles driven from the outside. They cribbed across the old channel; they commenced in this marsh pretty well, and their crib run right across the channel of the river, east and west, very nearly, until they came to the bar.

Q. Here are three piles laid down on the south side of the pier,

east of the fort: are those the piles you spoke of? A. Yes, sir; I should judge they were. They stood considerably out. I should judge four feet above the crib. They were there to keep it from tending down.

Q. What circumstance enables you to say definitely these piles stood in the river? A. Well, there was a large, deep hole in the old bed of the river, where they cut it off, south of the pier. It left a deep channel where it took a course south towards Madison street; there was a deep channel, and that remained there for a number of years after the pier was put across. I recollect it very distinctly, because it used to be a great place for fishing. The water filtered through the pier; the stone didn't hold the water tight, and it went through into the old channel, until it became filled up with leaves and brush, etc. After awhile it became tighter, but it percolated through. This fishing was done near these piles. They used to sit on the pier, and fish right in this hole. These piles were right along in the depth of channel, below the pier.

Q. Have you fished there frequently? A. Yes.

Q. How near was your house to these piles? A. I should judge it may have been thirty or forty rods. My house was just about southwest from this.

Q. Could you be mistaken as to the location of the river, in reference to these piles? A. No, sir, not in the least. I know that these piles were there, in the river, as well as I know that I stand here now.

Q. Did you see the construction of the south pier on the bar? A. I did—the most of it.

Q. Were there any piles driven on the south side of the south pier, when it was built on the bar? A. There was none at all.

Q. Then the absence of piles on the south pier, east of these three piles, would determine where the bar was? A. Yes, sir.

COURT—How do you know where the bar and river were? A. I commence at the fort to judge of the distance from this old bastion down to the grassy, marshy place—thence to the river; and then I judge of the width of the river to the west side of the bar; from the west side of the river to the west side of the bar.

Q. But about the piles? A. There were no piles on the south side, after you get across.

Q. What does that fact enable you to determine? A. Well, in the first place, when they came to the bar, they shoveled and wheeled away the gravel and sand, until they got it clear to lay down the crib work to the surface of the water. They couldn't work below the surface of the water. They cribbed down to the level of the water, across the bar. They commenced it with the stringers, I think, and laid them here west on this bar, and then commenced on that with puncheons. They were laid north and

south, across the stringers. These puncheons were hewed flattish, and laid directly on these stringers running east. They used that for a bed for the crib, and then they went on with timbers and cribs, and filled in with stone on the puncheon work on the bar. That, I think, was carried over to the water of the lake.

Q. How wide was the bar? A. I should judge that bar might have been from two hundred and fifty to three hundred feet at that point.

Q. In 1833, when they first built the pier, did they carry it out into the lake? A. They carried it out as far as the edge of the water. The action of the water was so strong they could not get into the water with this work.

Q. [Presenting a map]—Here are these angles. Do you know whether there were any angles there? A. Yes. I think that angle was east of the bar. I am not positive.

Q. It was in that neighborhood? A. Yes, sir.

Q. Do you know about a breach at any time in the south pier? A. Yes, I recollect about that. That breach was at the end of the puncheon work laid down on the stringers. It seems that where they came out of the river they sloped it up. This other work came from the other way, and it seemed as though it breached on the eastern shore of the river, where it was kind of shingled on until it came up to the shore. There this puncheon work came up to that, and they left a space, and according to my best recollection there was the breach.

Q. Where the joint was not well made? A. Yes, when the water became high it got to work around this crib work into the river. This puncheon-work was right on the west edge of bar, between the bar and the river. The water worked it out there, and was like a channel. I think the west end of the puncheon-work kind of swayed around some, and that disfigured the pier very much, and lowered it down. They took the old top of the work off, and that left a race-way between the river cribs and the puncheon work on the bar.

Q. Was any particular material put in at that point, to stop the water from running around? A. There was brush put in there.

Q. What brush? A. Tree tops like, brought from up the branch.

Q. Cedar? A. No, I should think not. There might be, but I should think not. I think it was brush that come from up here—strong stuff hove in to fill it up.

Q. Do you know of there being a breach at any other point, except that you have described? A. No, sir.

Q. You know of no breach anywhere else than where you have described? A. No, sir.

Q. Do you know of brush of being put in any other place? A. No, sir; that remained open for a while. They didn't close

it. I think there was something filled in the bottom to keep it from getting deeper. That used to be a passage for some time, and they used to pass through there with scows. Sometimes the water would rise so that it was three feet deep, and sometimes it was only a foot deep.

Q. Do you know anything of the construction of the north pier? A. I don't know so much about the north pier. I recollect their working on it; I don't go on that side so much.

Q. Where did they begin? A. They began on the lake shore, at the east side of the sand-bar, to make the pier; that was left for a long time; there was no crib no pier work put in for a long time, between that and the old river, across the sand-bar.

Q. But the pier was commenced at the shore line, and run east into the lake? A. Yes.

Q. Do you know anything about the accretions on the north side? A. Yes, sir.

Do you know how rapidly it formed there? A. Well, it formed pretty rapidly; it had the appearance of forming with the pier. Whenever there was an appropriation, and they carried on the north pier and got it out a pretty good distance, the sand would increase faster; and when it had increased so that it was out to the end of the work they finished first, the sand would drift around the north pier instead of accumulating; it would go to a certain point near the end of the pier and then not increase much, but when they made an extension—if, for instance, this spring, they go out four or five hundred feet, it would go out to about such a distance, increasing quite rapidly, and the next spring it would start again.

Q. Do you know anything about the ending of the water lots 33 and 34, on north pier? A. No, sir, I don't.

Q. Do you know how the accretions were found? A. Well, the sea drifted it along, and brought it kind of rolling along. When the wind was from north, the seas would come in and wheel the sand along. It came in along the shore from the head of the lake, I think, from the accretions.

Q. You think the sand drifted down from above? A. Yes, from way down the lake. I don't know how far, probably from Gross Point.

Q. Can you fix where they began the north pier, in reference to the shore, by any angle in that pier? A. No, sir, I could not. I can judge better where the bed of the river was on the south side.

Q. You are confident about the location of these piles and the bed of the river, from having seen it a number of years? A. Yes, sir.

Cross-examined by Judge Higgins.

Q. You lived near the south as well as north pier, just across the river at the foot of South Water street? A. Yes.

Q. Were you ever on the north pier frequently? A. Not very frequently. I didn't visit the north side so much.

Q. Did you ever go on the shore, so that you had opportunity of observing the sand forming after the north pier was built? A. Yes, sir, sometimes I used to go out there.

Q. You say that when there was an appropriation, and the pier was extended, the sand formed pretty rapidly for a certain distance, and then passed around the pier? A. Yes.

Q It formed most rapidly immediately after they had extended it out into the lake? A. Yes.

Q. You noticed enough to observe that? A. Yes.

Q. Did it sometimes almost stop forming near the end? A. After they would get a certain distance it would seem to stop—the only accumulation seemed to be when a heavy sea coming in would pile up the sand higher.

Q. It would always accumulate most rapidly immediately after the extension? A. Yes, sir, it would fill up rapidly.

Q. And always, when it got to within a certain distance from the pier, it passed round and formed a bar below? A. Yes.

Q. Is not that the action now? Had it not been standing about where it is now until they erected a light-house and extended it further? A. Yes, I should think so.

Q. Don't you know that outside of the pier the sand has formed a bar? A. Yes, sir, it was very deep, but this bar commenced extending out south-east.

Q. Can you fix any given amount of that accretion formed in a year? A. It formed rapidly. I could not tell if it took a whole season or more than a season to carry it out.

Q. The pier now is about two thousand feet out? A. I should judge so.

Q. It is filled out to within three or four hundred feet of the end? A. I should judge it had.

Q. They built a light-house or made a little corner for it, north-east? A. I understand so.

Q. Since then it has filled up fifty feet or more—did you notice that? A. I have not been there much.

Q. You have observed that every time they got an appropriation and extended it, it filled up rapidly? A. Yes.

Q. And when they quit building it ceased to fill up and went around the pier, and then a large bar formed to the southeast. A. Yes.

Mr. Arnold.—You remember the time they commenced the north pier, in August, 1834? A. Yes, I judge it was then.

Mr. Arnold.—Was there any accretion there the first year according to your observation? A. Yes, I should think so. The time was so short, there was not much accretion that season.

Judge Higgins.—Suppose it had stood over seven hundred feet in the lake for a whole year, what would be the effect? A. I

can't recollect; but I have no doubt but that the same principle would have effected it at that time as well as the other.

Q. Can you recollect how far it did extend in 1834 and 1835, into the lake? A. No, sir, neither year.

Q. You know it formed rapidly as they extended it out from time to time? A. Yes, sir.

HENRY SMITH, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. When did you come to Chicago? A. In the latter part of May, 1834.

Q. What did you first engage in immediately after you came here? A. I worked for Gurdon Hubbard, Esq.

Q. What did you do then? A. I worked on the public works. I went there soon after that.

Q. Where did you begin working? A. We first began on the shore, hewing timber.

Q. Did you assist in putting in the first and second cribs? A. I helped put in the first crib.

Q. Where was it? A. It was then on the north side, where the harbor is now. It was where there was an angle in the piers, close to where the lake shore was then.

Q. How was that crib put in? A. We took it there; we formed it in the first place on shore, and then floated it out and got it on the shore, and got it up as much as we could possibly.

Q. How far would it extend? A. The crib extended beyond the water line westward, about half of it, as near as I could swear. The second crib was put out right east of it in the water.

Q. Were there piles drove in these cribs? A. Yes, sir, some on the south side and some on the north side.

Q. Do you know a particular pile called Shapley's pile? A. I didn't know any pile at that time. At the other trial, they told about it, and I went over there. They said the first pile there was called Shapley's pile, and I went there to find it. Jacob Miller went with me over there, but he was not with me when I examined it. He stood off.

Q. He let you find it by yourself? A. Yes, I found the first pile that was driven.

Q. Where was it? A. The first pile on that pier was on the south side, but the Shapley pile, I understood, was on the north side. The first pile was near there, I mean.

Q. [Presenting Denton's map.]—What crib was Shapley's pile in? A. That I would not swear to exactly; my mind was that t was in the first crib, but the cribs were not so plain then to be seen as when the pier was raised.

Q. How was that pile put in? A. With a machine we always used there in the harbor—the pile-driver they called.

Q. When you floated that around from the north side, where

was the channel of the river you floated it in? A. That was near the pier on the south side. There was a pier built out from the garrison, it was on the north side of that pier, the south side of where the harbor is now.

Q. How wide was the channel? A. When I landed there, the channel was wide enough to get in with a good yawl boat, and row on each side. I didn't measure it, but it was wide enough to get in, and not much to spare, with our oars. We came in a vessel and landed there.

Q. How much dry land was there beyond the boat to the place where the north pier was subsequently put? A. That I think was about one hundred and fifty feet, between the old channel and where the north pier was put. The channel was about four or five feet wide that we came in on.

Q. That was in 1834? A. Yes, sir, the latter part of May.

Q. Do you know of an angle in the north pier? A. Yes.

Q. Where was it? A. That is near where a pier was laid when I came here. It is built a little different from what we built the other. I helped work on the south pier. We commenced on the shore to work. There is a pier there built on a different plan.

Q. Did the south pier run out into the lake exactly in the same direction it was on the sand bar? A. No, sir, it went a little more northern course with the extension into the lake.

Q. What point does the angle in the south pier fix? A. It was then the lake down where we commenced to build. It was the lake shore at that angle there. We commenced bending the south pier. That was near the old pier; that was built across the sand bar.

Q. Going westward on that sand bar, how wide was it? A. I should judge near three hundrnd feet, it may be about that.

Q. That would bring you to what point? A. To an old mess there, a little water that looked like it had been the old river. Going across the sand bar you would come to what looked like the old river. There was wood in it. I always understood it was the old bed of the river, it was then turned a different way from that channel.

Q. Was there a break at any time in the north pier, and if so, how was it repaired? A. There was some planks laid across that, there seemed to be something underneath; it was to walk on going from the fort to the sand bar.

Q. Did the water flow through there; if so, how was it stopped? A. In high water it would run a little through that pier, across that old river, and through that hole, where they walked backwards and forwards on the plank. They stopped it up with some brush we got up north on these sandy mountains, or what you call them—sand hills.

Q. What kind of brush? A. I believe cedar brush.

Q. What kind of work did you do on the north pier? A. Sinking cribs, and when we could not sink cribs we worked on shore framing timbers.

Q. Did you work leveling up any? A. Not the first year, that I know.

Q. When did you begin working upon the north pier? A. In 1835. I couldn't state at what time. We commenced sometime in the summer of 1835, on the shore where we first commenced to put in these cribs.

Q. At that time was there any new made land north of the first and second cribs? A. There was not.

Q. At what time of the summer of 1835? A. Well, it made a little at that time. I was thinking of the summer of 1834. In the summer of 1834 there was none there.

Q. How long did you work there on the harbor in that year? A. I worked there until between Christmas and New Year.

Q. Up to that time had there been any land made there, north of these cribs? A. I didn't go there the last days; but about a month back there was none.

Q. None? A. None of any account, I don't believe.

Q. When you began the summer of '35, had there been any change made in the condition of things from the fall before? A. It appeared to be making a little land in the corner near the crib.

Q. When did you leave off work in '35? A. Towards fall; we generally quit when the fall comes in; I don't know exactly how late. The second year we didn't work quite so late as we did in '34. I think it was about November when we left off.

Q. When you left off was there any accretion formed north of the first and second cribs? A. There was a little more than there was in the forward part of the summer.

Q. What was the extent of it from the angle where you commenced the north pier, on the old lake shore? A. It made, I should think, about thirty or forty feet—not quite forty, I don't believe.

Q. Does any circumstance enable you to say certainly that it had not gone beyond that? A. When we levelled off the pier, we worked there in times when we could, and I saw the water there.

Q. Did you work there with Sadlier when he fell into the water? A. Yes, sir; we were sawing with a cross-cut saw.

Q. On what crib? A. We hadn't worked long. I presume it was the second crib.

Q. State any circumstance that enables you to recall that, whether after he fell in the water you went on the outside? A. Yes, sir, I did; and he said he did not want to get hurt any more. He said he would rather be on the inside, if I would go on the outside——

Q. What were you doing? A. We were sawing holes in the timber we put on to raise the pier for ties to go in to hold the piers together. I believe it was the second crib. Afterwards it was filled up with stones. We had to saw holes six inches on one side and three inches on the other side; kind of dove-tail holes for the ties to go across from one side of the pier to the other. At first Sadlier stood outside of the pier and I inside. He stood on a board fixed on some hooks and braces, so that a man could stand on it handy to saw without any trouble. He had hold of the saw on the outside and fell in; that board some way or other give and he fell in. Then I went outside and he inside.

Q. When he fell, what did he fall into? A. Into the water.

Q. How deep was it? A. He got wet up to his knees, as near as I can recollect.

Mr. Arnold—How far back from the shore was that? A. Not a great ways. I don't know how many feet from where the old shore had been.

Q. How much did the water extend west of the place where he fell in? A. How much increase do you mean?

Q. Yes. How much? A. Well, I should call it about ten or twelve feet to the new-made land.

Cross-examined by Judge Higgins.

Q. Smith, have you talked with any one about this matter? A. Not particularly. Only what you asked me the other day about some increase.

Q. Havn't you talked with somebody else? A. Well, I have seen some of the gentlemen round here, and I asked them to refresh my remembrance.

Q. Why did you say no, only what you talked with me? A. Well, I haven't had any particular talk except just to talk, they didn't ask me.

Q. You have talked with them to see what they remembered? A. Yes, we had a few words about it, that I can't deny.

Q. How do you remember what crib this was, that you fell off of? A. It was when we had just commenced work and hadn't done much.

Mr. Arnold—In leveling up? A. Yes, sir.

Q. Give us the time when you commenced to level up? A. In '35. I couldn't say the day nor exactly the month. It was in the summer of 1835.

Q. In warm weather? A. Yes, sir, because we could bear to be in the water.

Q. You are sure that this little incident occurred when you first commenced to level the pier? A. Yes, sir, it was near the first. I don't recollect how long we had been at work leveling up, it was not many days. It was the first commencement or nearly the first.

Q. Had you been at work a week, or a month or one day? A. I couldn't state that. We were pretty near the shore, pretty near the end of the north pier.

Q. How high was it when you commenced extending it? A. We put some wedges [?] on, that brought it out on the water, all the way it was not level.

Q. It was about a foot? A. Yes, some a foot and some more but not much more, because of the pile-driver.

Q. You had never attempted to level the crib? A. We had put some wedges on before that, to make them level and then we put some square sticks on and framed them in the piles.

Q. How was the whole pier out into the lake at that time? A. It was nearly all along.

Q. You had not commenced to level up, before that? A. No, sir.

Q. You commenced to level up on the west end of the pier and had some one leveling east of where you were sawing? A. Yes, we commenced on the west end.

Q. If it should turn out that this was leveled up in 1834, you would find yourself mistaken? A. This was in 1835.

Q. But if it should turn out that this was leveled in '34? A. We didn't build any there in '34.

Q. You are sure about that? A. Yes sir, I am.

Q. At what time did they cease to extend the pier into the lake in the summer of '34? A. When we commenced it was summer.

Q. What did you do when you first got through extending it? A. We built some of the south pier.

Q. How far did you build it out in the summer of '34, on the south side, into the lake? A. I could not state exactly how far we got out the south pier. We didn't get it out as far as the north pier.

Q. Can you state within 500 feet of how far you got the south pier into the lake in '34? A. I guess it was 150 or 200 feet.

Q. What next did you go to work on in the fall of 1834? A. Late in the fall we commenced to get stone; but in this fall I had to go off once. There were some scows gone, and I had to go off to the south end of the lake for them, with four or five or six men—I don't recollect how many—to fetch them back. I was gone ten or twelve days.

Q. You fix that time in '34? Yes.

Q. You are sure they were lost in '34? A. Yes, I believe I am sure.

Q. You are more sure of that than of Sadlier's falling into the water? A. About the same.

Q. You are sure both were in '34? A. No, the falling in the water was in '34.

Q. You are sure the scows went off in '34? A. Yes.

Q. You are sure that the crib-work stood until the summer or fall of '35, before the cribs were raised any more than a foot above water? A. Yes.

Q. How high did you get them in the fall of '35? A. They built some of it, I think, six or seven feet above the water.

Q. How far out? A. I don't know. I never took a measurement of them. I can't recollect that. I didn't state exactly how far we got out the pier; I guessed at it.

Q. Give us your best guess how far you extended the north pier, five to seven feet high, in the summer of '35? A. That I couldn't tell, because I didn't take particular notice.

Q. How long was the north pier in '35? A. I should think about 500 or 600 feet.

Q. Don't you know the north pier was 1,280 feet long in the fall of '35? A. I thought you asked for '34.

Q. Do you think now it was one thousand two hundred and eighty feet in the fall of '35? A. I can't tell. I never measured.

Q. Can you give us an opinion? A. No, sir, it is hard to judge, because we had a considerable length, and I had no interest, but I just cared for my work, and what I was employed for.

Q. Why can't you tell the length of the pier, as well as the extent of the sand? A. The sand was only a little distance, and I could judge.

Q. You cannot judge, then, of long distances very well. A. No, sir.

Q. You are very confident that you leveled this up in the fall of '35? A. Yes.

Q. You are very sure of that? A. Yes.

Q. You commenced at the west end? A. Yes.

Q. You hadn't leveled any on the east end? A. No, not in the summer of '35.

Q. Can you fix the time when Sadlier fell in the water? A. No, sir, not the dates; not the day of the month, nor the month.

Q. Can you remember anything except that the water was about up to his knees? A. I don't know that I could.

Q. Can you tell us whether it was on the second or third or fourth crib? A. It was not so far as the third crib.

Q. Why? A. Because we hadn't been at it long or done a great deal of it.

Q. How far had you got out when they had worked a month? A. I can't tell that. We didn't work at it steady. We worked at it sometimes, and then we would get out some other cribs.

Q. You can't tell us how many days you had been at work? A. No, sir.

Q. Can you give us any idea? A. No, sir, not at doing that business.

Q. Can you tell about how far you would get it up in a week? A. No, sir.

Q. Who worked with you? A. Sadlier.

Q. Who else? A. Only two of us, sawing gains.

Q. Who else was working on the pier? A. Joseph Chandley and Morgan Shapley, and old man Jackson. I believe Skinner was boss Carpenter.

Q. Would he not know better about this work and its progress than you do, likely? A. Well, I don't know, he might.

Q. Can you tell how long it was after that they covered the pier over? A. Yes, they covered it with some plank. That I can tell.

Q. Can you tell when they commenced? A. No, sir.

Q. Can you tell what year it was? A. No, sir.

Q. They had covered it the whole distance? A. I don't know as they had the whole distance, because they worked some after I had left there.

Q. What kind of plank had they covered it with? A. It was about six inches wide and two inches thick—I believe two inches.

Q. Might it not have been four? A. No, sir, not so thick.

Q. When did they commence to cover? A. As soon as they got out I know they covered it some to walk on handy.

Q. Then they commenced covering it immediately? A. That I don't recollect.

Q. Can you tell how far you raised the pier up going into the lake? A. Yes, we raised considerable of it.

Q. How much? I don't know.

Q. Was it five hundred or a thousand feet? A. We didn't go five hundred. I don't recollect how far we went.

Q. You have no recollection about it? A. No, sir, because we didn't finish it.

Q. But how much did you do? A. I couldn't tell. It's hard to state that, because sometimes we raised some and then went to other work. We raised it two or three feet, and some we had higher than that.

Q. Do you remember anything about that slough or low place in the ground that Sadlier spoke of? A. No, sir, I don't recollect, only in shore there was some low place where there was some water standing.

Q. You don't recollect anything of the slough he spoke of? A. No, sir, not near the shore. There was a low place near our boarding-house. That was a good ways in shore.

Q. You don't remember seeing any land east of the place where Sadlier fell off? A. No, sir.

Q. You have no means of knowing what crib he fell off of, except that you hadn't been at work long? A. Yes, sir, and because it was pretty near the shore.

Q. But the shore followed the pier, didn't it? A. No, sir, not the first year, it was not all filled up.

Q. Of course, but it all filled up in '37 and later years? A. Yes, it was filled up in '37.

Q. How much in 1836? A. That I couldn't tell exactly, because I was not there in 1836, and didn't take notice.

Q. You worked there in '37? A. Yes, the biggest part of the summer. I presume about five months.

Q. How much did it fill up in those five or six months? A. That I couldn't state.

Q. Why did you observe it in '34 and not in '37? A. Well, in '36 and '37 it had made pretty much all the land I had seen there at that time.

Q. How far out was it on the pier in '37? A. I don't know how much.

Q. How far beyond this angle? A. That is hard for me to tell, because I couldn't guess it within fifty or a hundred feet.

Q. Was it a thousand feet? A. I believe not.

Q. Was it eight hundred or nine hundred feet? A. No sir, I believe not. It might have been three hundred or four hundred feet in '37, but I couldn't state certainly. I am not certain about that.

Q. Might it not have been eight hundred feet or more? A. No, sir.

Q. How near was it to the end of the pier? A. That I couldn't tell, for I didn't take particular notice.

Q. Did you take particular notice of it at any time during '37? A. No, sir; not to judge how much it was.

Q. Why did you notice it in '35 and not in '37? A. It was such a little I took particular notice. It was a new thing for us then, this increase was.

Q. Did you have anything to call your attention to it except Sadlier's falling off the pier? A. We always worked there and saw the water then.

Q. But you worked there in '37 and saw the water? A. Yes, but then it was out a considerable distance in '37.

Q. You can't tell how far the filling and leveling up of the pier extended during '35? A. No, sir.

Q. You are sure they didn't commence to level it up, but it only stood a foot above water until the summer of '35? A. Yes.

Q. You are perfectly sure? A. Yes, sir.

Q. The first thing towards leveling was in the summer of '35? A. Yes.

Q. You are sure the scows went away in the fall of '34? A. Yes, sir.

Q. It was a year after that that Sadlier fell into the water? A. Yes, sir; the scows went away in the fall and we filled in the next summer.

Mr. Arnold—You were asked if you ever saw any land east of

the place where Sadlier fell in. There was no land east of that place, was there? A. No, sir.

WILLIAM GAMBLE, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. State when you came to Chicago, and what your occupation was then and since? A. I was employed by Capt. McClelland, the General Superintendent of Lake Harbors, to keep accounts and make surveys, in 1843, when I came here. From 1843 until 1847 I was employed by Capt McClelland. From that time to 1853 I had charge in the harbor and was employed to make surveys and reports to the government.

Q. [Presenting "Gamble's Map,"] State whether you made that map, and located the fort and buildings, etc., before they were removed. A. Yes. I had surveyed them. This map is marked 1850, but these surveys were made previously, in '44, I think. I surveyed the shore line here on the river from State street on both sides, down to the pier. I surveyed the piers and also the shore lines here. [The map was raised, and being extended in sight of the jury, the witness indicated the points alluded to as he proceeded.] These are the buildings inside the line of the Reservation. Here is the lake shore, here the south pier, etc. These dotted lines are laid down from surveys made by me. These buildings belong to the Government, including the light-house. I surveyed the old town on that map from this point on State street, the section line of fractional sections ten and fifteen. These shore lines marked 45 and 49 were also surveyed and laid down by me.

Mr. Arnold—These angles in the north and south piers—you have them from your surveys? A. I know where they are. This is the north pier; this is lot 33 on the north side. That angle is the north pier, according to my survey, is on lot 33. The angle in the south pier is a little more west than east of this angle in the north pier. It is west of a north and of a south line, drawn through that point.

Q. What does that line indicate? [pointing.] A. That line is taken from Kinzie's recorded map of Kinzie's Addition, and shows the shore of '33. It is not from any survey of mine.

Judge Morris—Was there not a hole in the south side of the south per, near the Marine Hospital, to your knowledge? A. I think it was about two hundred feet east of the Marine Hospital, as near as I can remember. There was one there when I came, in '43, and I think for two winters ice had been cut there, there being something like eight or nine feet of water in it and a shoal outside of it. It was a kind of oval form.

Q. [Presenting Greeley's Map, No. 1.] (Ex. F.) Does that correctly represent it? A. It was not exactly that shape; it was oval. It was in that position as near as I can remember. I think the position on that is correct, except the shape; it was an oval instead of a square form, as represented there.

Q. How long was it? A. I suppose it sloped gradually deeper into the centre. I should say it was about one hundred and fifty by one hundred feet, and eight or nine feet deep. Ice was cut there one or two winters.

Q. Have you been U. S. Superintendent of Harbors? A. I have been part of the time agent of the government, and part of the time assisting the General Superintendent.

Q. State, if you know, what the duties of that office are, and whether reporting accretions, to the government, forms any part, of the official duty of the Superintendent of the Harbor?

Objected to.

THE COURT.—Do you know any thing about it? A. I do sir.

Q. Do you know of any instructions being given in relation to that matter? A. There were several reports to be made from year to———

Objected to.

Witness.—Then I will answer it in this way. Perhaps it will not be objectionable. For two years I was connected with the harbor works, the reports of the harbor passing through my hands. I know the accretions during that time were reported as a part of the official report made to the Topographical Bureau. These years were from '43 to '53.

Q. Was it a part of the duty of the superintending engineer to report these accretions to the government?

Objected to. A. I believe it was done.

Q. You were in the office of Captain McClelland? A. Yes, sir.

Q. What was his position? A. General Superintendent of all Lake Harbors on the upper lakes.

Q. Who did he succeed? A. Capt. Cram.

Q. Who preceded Capt. Cram? A. That goes behind my knowledge of it.

Q. Do you know, from your connection with the office and the official papers, whether Lieut. Allen had been Superintending Engineer? A. Yes, sir, he had been at Chicago.

Q. Have you seen the maps made by him? A. I have.

Q. [Presenting Allen's Map of '37,] (Ex. C.) Look at this? A. I have seen something similar to that.

Q. [Presenting another map by Allen.] Did you see a map of this description? A. The map I saw of Capt. Allen's is like this one; but it had a spit of sand on this side.

Q. During Capt. McClelland's time, did he make a report of soundings of the depth of water and the bars, north of the pier? A. In every annual report he gave, there were soundings in it.

Q. Soundings where? A. At the harbor's mouth and in the vicinity.

THE COURT.—Do you know any thing about the duties of the officer, except from what you saw and heard as to the manner in

which the business was done? A. Well, they were general instructions and special ones in regard to these things, that formed a part of his duty necessarily, because that engineer in charge had to show the obstructions which were making by the water to obstruct the harbor's entrance, and also to show, as it was the custom to do in making the annual report, the amount of money necessary to be appropriated for extending the work the following year. The obstructions had to be shown, and to show them the depth of water, to show what was necessary to be done for the ensuing year, by the government. That was a part of the instructions.

THE COURT.—As this is all in 1843 that he knows, I don't think it would be worth while to go to over that, but I do not undertake to say that evidence of soundings, made at the time that this transaction was going on, would not be competent.

Cross-examined by Judge Higgins.

Q. Tells us how you came to place this line here, [illustrating by the map,]? A. I took it from the former maps in the office. I, of course, didn't do it myself. Down here I surveyed myself, and also, these piers and buildings, and this line up to State street, and this pier as far as this point.

Q. But the shore line below you took from the old map? A. Yes, sir, a map in the office, from a former survey.

Q. Was the survey of this shore line marked '45, made in '45? A. Yes.

Q. And this one marked 1849, made in 1849? A. Yes.

Q. And these are from actual surveys and represent real accretions during these years? A. Yes, and there is in pencil, a line of '52, also by me.

Q. Is this line along here intended to represent the meandered shore line south of the south pier? A. It is projected there, but not a part of my survey. The map is made with reference to that one, and this properly represents it, so far as that map is concerned. It is only connected with this addition, at this outside line run by me. I have simply laid it down from the original field notes, a copy of which from the Surveyor General's office, is on file. Here is a line which represents the old meandered line of '21. This is a continuation from the field notes of that meandered line north, but there is this difference, that they will not close without a change of the course.

Q. You mean by that, that this line down here, if you follow the field notes, would take you through the fort? A. I don't remember; but I remember one of the courses was wrong, and wouldn't come in.

Q. Taking the correct course, you have followed this and corrected that course? A. I have followed it, and corrected it as well as I could.

Q. You don't remember how you corrected it? A. I don't exactly remember, but I could very easily tell by the way it is laid down.

Q. Didn't you do it by reversing one or two courses? A. I don't remember exactly whether it was one or two.

Q. How did you get the line north of this point? A. I simply started from one point, and run it through, and found it wouldn't come in; and then I examined the courses, each one separately, and by altering I made it come in. I just simply put it in, under the circumstances as well as I could. This is a meander line, north of this side. I would not vouch for the correctness of it. This is made from the field notes, but they won't come in right on the pier—they won't come out right. This meandered river line will not close upon this line here.

Q. You endeavored to make a correct line there from the field notes? A. As near as I could, but I don't think there was much correctness about it.

Q. How far on the north side is the meander line from the shore? What distance from that point? A. Let me explain. In these field notes, the word "shore" is not mentioned, nor "lake," anywhere on the north side of the river.

Q. Is it on the south? A. I can't say, but it may be.

Q. This survey was made in '31, and this point was made in '33; now, how far was the meander line from this lake shore, at this point, where North Water street intersects the lake? A. That is four hundred and sixty feet.

Q. The meandered line was four hundred and sixty feet from this lake shore, from this point on the north side? A. Yes, if that is correct. I don't believe that line is accurate.

Q. What of the line south? A. The one depends on the other. He starts here, and he closes here, and there is no closing point between them.

Q. If one is wrong the other is? A. It may be. You can't tell where the error is. That is the meandered line of '21. I am sure there is an error in it, but I don't know where.

Mr. Arnold.—You never surveyed it with a view of finding out? A. No, sir. I know it didn't meet. The field notes don't very satisfactorily establish whether this line on the river closed at any of these points or not. It don't satisfactorily show that, though it ought to, and a correct survey would do it.

Q. It would only vary some forty or fifty feet? A. It would be fifty feet.

Q. So that still there would be over four hundred feet from this line of the original lake shore, as we know it was actually surveyed and fixed, to the meandered line of the government in 1821, even if there was an error of fifty feet? A. I will say, that where this line came, by taking the courses right from the book, it would be away up there. [Indicating a point.]

Q. But that would still leave a difference of three hundred and ten feet, instead of four hundred and sixty feet, if you take the

course from the book between the original lake shore of 1833, and the meandered line of 1821? A. Yes, sir.

Q. You corrected that mistake? A. I didn't know where the mistake was. I plotted it so as to make it close as near as possible. I believe the line is wrong; I don't know where the error is.

Mr. Arnold—You never undertook to find it out? A. No, sir.

Q. What distance on the pier did the sand form during the four years you have spoken of? A. 150 feet. Here is the line of '45; it was that much in four years.

Q. How much from 1845 to '49? A. That is near 100 feet. It washed away in '49, and increased here.

Q. How much from '37 to '39? A. It is 400 feet on the pier.

Q. How much from '39 to '45? A. 360 feet.

Q. How far is it from the angle of the pier to the line of '37? A. It is 380 feet. From the bend in the angle of the shore to the most easterly point of the line of 1837 is 450 feet.

Mr. Wills—[Presenting Allen's map of '37]—What are the accretions on that map from the angle? A. It is 300 feet to the east angle. [Taking Allen's map of '38.] The line here is 490 feet distant.

Judge Higgins—[Presenting Allen's map of '37]—How far is it from 22 feet west of that bend, taking the west line of lot 34, to the point marked on this map as the accretion of '37? A. Well, I know the lots are laid down correctly on my map; I don't know about this; the number of the lot is not marked on the map; but it is 340 feet from the west line of the second lot, on this map, to the line of accretion of 1837.

MARTIN GREEN, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. Do you reside in this city? A. Yes, sir.

Q. State whether, at any time, you had a contract with the city of Chicago to take up any portions of the south pier? A. I had a contract in 1856, and I took it up from the west basin of the Illinois Central Railroad to the Rush street bridge. I began, I think, 28 feet east of the west line of the west basin. The pier projected into the basin, I think. I commenced at that point, and progressed westward about 60 or 90 feet—about three cribs, I think. The cribs were 30 feet long. Then I went to the west end of Rush street bridge, and worked east, and continued on the different ends just as suited the work.

Q. Were you requested by any person to note the varying depths of the pier, as you took them up from point to point? A. Yes, sir.

Q. Was there any change in the depth, as you found it, near Rush street bridge, and as you found it farther east? A. There was. The pier was about 10 or 11 feet below the water at the

point of the west basin, and it run about that depth for 60 or 90 feet, I think, and then grew shoaler as it run up. The pier became shallower, with a gravel bottom.

Q. Beginning at Rush street bridge, and going east, what was the depth? A. The first part of the pier, near Rush street, seemed to be broken and disturbed in some way. It didn't seem to be as firm as it was farther east. There were obstructions to dredging, I think, about 100 or 150 feet, and we came to a very deep pier, 22 feet, I think. Near the bridge, I think, it was 6 to 8 feet. Some piles, of course, went lower than that. The piles were driven along, and it went for about 100 feet, and then became from the top, I think, 22 feet. [Taking the Greeley map, No. 2.] This deep part was about 200 or 250 feet long, that was 22 feet deep. [Witness passed around to the jury to indicate the localities on the map.]

Q. Does that line represent the condition of things? A. I think it did. Beginning at the east end, I found a gravel bottom with sand. Then I began at the west end, and worked east. It continued eastward from 10 to 12 feet deep, till I came to this point near the Marine Hospital Grounds, noted here as the west bank of the river. Then it got 22 feet deep, and continued for 200 odd feet that depth. I think these are the distances here, and they agree with my memory.

Q. In taking up the pier, did you encounter any thing on the south side of the south pier? A. I found a buttress crib put in the end of the south side of the south pier, lying at a little angle. I have forgotten whether it was east or west of this point.

Q. Did Mr. Greeley locate it by survey? A. Yes, sir. I gave him the points, and found it afterwards on the map to be in accordance with the notes I gave him.

Q. Did you find any thing else out of the ordinary course? A. I found a portion of the pier near the buttress, I think, a little east of it, where the top part of the pier nearly above water projected a little over on one side, and on the other it didn't come quite flush.

Q. In taking up the pier near the crib, did you find anything in the bottom different at that point from any other point? A. At the east part, near the basin, I found a three inch oak plank pinned down, and once in a while a pine slab. These were pinned down to a heavy flatted timber in the first place, and then the other timbers were atop of that. Here is the little brick depot, and the crib was nearly opposite the east corner of that.

Q. What about the brush? A. That is opposite the little brick depot, as shown on the map. I found the brush here west of the crib.

Q. What kind of brush? A. Cedar brush, in a very good state of preservation, quite a large quantity of it. It was all on

clear gravel. In dredging that down at low water, we came to clay at about sixteen feet.

Q. Did you take up the eastern end, forming the east end of the Illinois Central basin? A. I made the first opening through there into these basins, and took up the ends here.

Q. From this point west to Rush Street bridge, in all the pier, did you find brush anywhere except at this single point? A. No, sir, nowhere else.

Q. Neither east nor west of that point? A. I don't recollect any at all.

Q. Were you requested to make observations as to this matter? A. I was.

Q. Did you make observations and reports? A. Yes, sir. If I was necessarily absent from the work a little time, I inquired on my return of the men, if anything new had occurred, and if so I noted it and reported it.

Judge Higgins.—Have you been stating what you learned from the men, upon inquiry as to this buttress crib? A. I know personally as to the plank, and the bottom of the pier. I can say within a foot or two of the depth of the deep part of the pier, because I was looking at the dipper handle, and the men repeatedly called to me to get another dipper handle made, that the dipper handle would not reach the bottom. I superintended this work.

Q. Were you paid according to the depth of the pier you took up? A. No, sir, by the lineal foot.

Q. Were you paid for this depth of twenty-two feet more than for the eleven feet? A. I was not paid anything extra, but I was paid in proportion for that part which was deep, just like the rest.

Q. What about blue clay? A. In the whole distance wherever we found gravel and sand we found blue clay. We dredged sixteen feet and came to blue clay here.

Q. In the shoal part you found gravel? A. Yes.

Q. Suppose this to be a sand-bar, then the gravel was on the sand-bar? A. We found no gravel at the west basin. We come to blue clay there, that was outside of the sand-bar; then it deepened down, and under the deep part we found a great deal of black muck, and a great deal of dirt of all kinds, and slush.

Q. Did you find gravel? A. No, sir, I found muck away down in the deep part.

Q. Did you find any muck west of where it got shoaler. A. We did, some little distance.

Q. Did you up to Rush Street bridge? A. No, sir, that was a yellow sandy loam on top, and clay under.

Cross-examined by Judge Higgins.

Q. How far east did you take up this south pier? A. I took

it up, I think, about seven feet east of the east line of the east basin of the Illinois Central.

Q. Do you know how far that is, east of what you call the buttress crib? A. I have measured these distances a good many times, but I can't remember.

Q. Can you refresh your recollection by the map? A. Yes. [After referring to the map.] I should think about five hundred and forty feet. I rebuilt the pier between the two basins this last fall.

Q. You are familiar with that? A. Yes, sir.

Q. How far east is it from what you call the buttress crib to the east point of where you took it up? A. I should think about five hundred and forty or five hundred and fifty feet.

Q. What was the depth of the water where you took up that last crib east? A. My recollection is about six or seven feet.

Q. Do you know how much higher the lake is now than it was when that crib was put in in '33? A. I don't know anything about how the water stood then. I came here in October, '35.

Q. If the lake is some three feet higher now than it was at that time, that would have been a shallow water?. A. Yes, sir.

Q. Was not the work shoaler out where you took up the last cribs, than this way? A. Yes, sir, we found gravel.

Q. Are you an engineer by profession? A. Yes.

Q. Would a crib rise or settle in the lake? A. If it was filled with stone it would not rise. I should think then its tendency would be to settle.

Q. Had these cribs been filled with stone? A. I found them all filled with stone, and piles driven through them.

Q. You found the water got deeper instead of more shallow? A. Yes, in following the piers out, it was deeper; in other places I had to put on blocks to run one hundred pounds of steam. [Not distinctly.]

Q. Then the water got deeper at this end than where it was four hundred and thirty feet out on the pier? A. Yes. [Witness passes around to explain to the jury by the map.] Away out there the water was only six or seven feet deep, and was getting shallower where I took up the crib. That is five hundred and forty or five hundred and fifty feet east of this point.

Q. Do you know where the angle in the north pier is? A. No, sir.

Q. Do you know where what is called the Shapley pile is? A. No, sir, I never saw it that I know of.

Q. How much crib work did you take out, to open that eastern basin? A. I made an entrance about three years ago, about ninety feet, and that left the two ends projecting into the basin from either side. That made it difficult for vessels to get in and out, and last year I took out these ends.

Q. It was eleven feet on the bar and shoaled further east, and

you took up one hundred and twenty feet in a line right there? A. Yes, I did, at different times, running the whole extent of the basin. I think I took up five hundred and fifty or five hundred and sixty feet from the buttress crib.

Q. It's about six hundred feet east of the buttress crib, that the water, at its present stage, was only six or seven feet deep? A. Yes.

Q. You put the distance from the east side of the entrance, from what is called the buttress crib, at five hundred and fifty to six hundred feet? A. Yes.

Q. Across the bar, did the water go up gradually or suddenly from this point? A. That is very hard to tell. My recollection is, that it rose from the deep part gradually to this point, and then went off gradually to the basin.

Q. Suppose the river to have leaked a little under the cribs—would that have settled them? A Yes, sir, certainly it would.

Q. What was the general depth to the east slip of the Illinois Central, from a point fifty feet east of the buttress crib? A. I should think from fifty feet east of the buttress crib to the west basin, it didn't vary much from ten to eleven feet.

Q. How much would it average the next two hundred or three hundred feet? A. On the east side of the west basin, we had six or seven feet. On the west side of the east basin, it was not to exceed seven or eight feet.

Q. Then it was very nearly level for that one hundred and twenty feet? A. Yes. It was about two hundred and twenty feet between the basins. That would bring to the west basin. That was about nine feet. Going still west, it got about a foot deeper. On the west side of the west basin, calling the other nine feet, it would be about eleven feet. It varied a foot or two.

Direct examination resumed by Mr. Wills.

Q. [Presenting Graham's Map G. 62.] Did you take up that part that is west of the grain house? A. Yes, sir, I took up the pier at the entrance of the basin.

Q. Did you take up the pier immediately in front of the grain house? A. No, sir, that is not removed.

Q. Can you state the depth of the pier there, at all? A. No, sir, only on either end.

Q. What is the width of that grain house? A. I should think about eighty feet.

Q. Not more? Can you tell by that map? A. It seems to be more by that scale. I believe this freight house is a hundred feet —not far from it

Q. Then between the east and west basin, there is a hundred feet or more of the pier that was not taken up, and in regard to the depth of which you know nothing? A. No, sir.

It being now ten minutes past four o'clock, the Court adjourned until to-morrow morning.

Fifth Day—Wednesday, March 28th, 1860.

THOMAS COOK, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. When did you first come to Chicago? A. In 1832, I believe sir.

Q. What business did you engage in? A. I worked here in '32, and then in the spring of 1833, I commenced carting—carting dirt of all kinds.

Q. Were you here when they built the south pier from the fort, east? A. Yes, sir.

Q. Do you know anything about the way in which it was constructed? A. I remember their stopping up the old river there first.

Q. Do you remember anything about there being crooks in the pier, north and south, angles? A. Yes, sir, I noticed them.

Q. Where was the old shore of the sand bar, east towards the lake? A. On the east side. It don't signify, but it runs straight across there.

Q. [Presenting a map].

Judge Higgins—I would rather you would examine him first without the map.

Witness—I don't think I want the map. If anybody knows as well as I do they won't be mistaken.

Q. You say there was an angle in the pier, on the lake shore, on the east side of the bar? A. Yes, sir.

Q. How was that angle in the north pier? A. It was about the same place, I guess, because the bar was about straight across it before the river was cut through there.

Q. What was your business? A. Carting sand and water mostly.

Q. Where did you get water? A. From the lake.

Q. North or south of the pier? A. Sometimes on the north side, sometimes on the south. I hauled sometimes 20 or 30 loads a day.

Q. From north of the north pier? A. Yes, sir.

Q. Do you remember when and where they commenced building the north pier? A. They commenced against the lake shore.

Q. After the north pier was run out the first season, was there any land made there on the north side the first year? A. Yes, there was a little; but it was a very little. There was a great deal made in the lake, but not at the shore.

Q. Tell how you know it was made in the lake and not on the shore? A. Well, if you will allow me to tell, I will tell it.

Q. Go on? A. I used to haul water across there every day, and it was pretty near a plumb shore.

Q. What do you mean by a "plumb shore?" A. Well, I couldn't drive my horse in and turn around without getting him rather deep in. That was before the pier was put in. But the first year the pier was put in, when I drove there after the spring when they began, to get water, I could see the bottom was filled up. I didn't know what it was at first, but I drove in, and found it was solid sand that had washed up. I could drive in a rod safely before I would get in deep enough water to fill my cart. I think a rod and a half. It was a bit of a way. I could see the sand further. Before the summer was out there was a kind of a breach in there, and then a kind of a sand ridge.

Q. What year was this? A. I believe it was '34;—no, it was the spring of '35, it began to get shoal.

Q. How was it in '36? A. It was filled up a little more there, and it was filled up a good deal shoaler there on the north shore.

Q. State whether during the summer and fall of '35, there was any land made there on the north side of the pier, above water, and beyond the old shore? A. Yes, sir, there was some made there.

Q. How much? A. I can't tell. I think not over 25 or 30 feet, or maybe 35 feet. I don't know; it was not a great deal.

Q. 25 or 30 feet? A. I can't tell for certain. I know there was a little right up against the pier, because I got two or three loads of it. It was nice sand for the masons. That I got close to the pier. It had washed up there.

Q. You had occasion to go down there, day after day, 20 or 30 times, hauling water? A. Yes, I used to haul water on both sides of the river. That was my business every day. Sometimes I got done by noon, sometimes I didn't. That was my business mostly there.

Q. The first year you noticed it was getting shallower outside? A. Yes, the first year.

Q. The next year it had made a little opposite the shore. A. Yes, it made a little the first year, and more the next year.

Q. How much in '36? A. I don't know, there was a good deal more, I don't know how much. It was a good deal in '36.

Q. It began to show itself on the top of the water. A. Yes, and a good bit of a ways from the pier, too.

Q. Do you know about a breach being made in the south pier, and the water running through there, and the measures taken to stop it? A. Yes, sir. I think when the harbor cleared out, it burst through there a little. I remember seeing them landing brush when I was going down for water once in a while; but I didn't go down there for water much. I didn't like the water there, but just took river water for masons and such things. Just back of the old Fort was where the old river was. I remember being down and seeing them with some brush, but I don't know what it was.

Q. Where was that put in? A. In the old river on the east side.

Q. Was it on the side towards the bar? A. I can't tell.

Q. What kind of brush was it? A. I don't know. I didn't take notice.

Q. Your operations were confined to the north side? A. No, sir, I used to haul as much from the south as the north side, but I had to go around the sand bar, and we used to get water on Water street, as near as we could to the harbor shanty.

Q. Do you know where the Shapley pile was? A. Yes, sir. It was right at the lake shore, at the beginning of the lake shore.

Q. Are you certain about its being at the lake shore? A. Yes, sir, it was somewhere just near the shore, in a-ways. I wouldn't say it was close at the shore.

Q. How much would it vary from the shore? A. I can't tell that.

Q. Did you ever see any person taking up that Shapley pile? A. Yes, sir.

Q. Or near there? A. Yes, sir, this side. I know it was about the place where they took it up.

Q. Who took it up? A. I don't know. I think Mr. Burdick was one. I don't know the others.

Q. Was McGregor one? A. Yes.

Q. When was this? A. I don't know.

Q. Was it when the case was tried the last time? A. Yes, sir. I was down there and saw them taking it up.

Q. Do you know how long it was when they brought it up? A. Yes, sir, I think it was sixteen or eighteen feet, I don't know which; but it was measured there then. It was as much as sixteen or eighteen feet. It was quite a long one. It took a deal of drawing, I know that very well.

Q. How did they take it up? A. I have almost forgot how. I think they began to pry it up.

Q. With jack screws? A. Yes, they had a screw there. I have almost forgot about that.

Q. Were the people taking it up anxious to have you there? A. They never said anything about my being there. I was there, however.

Q. Was Mr. Jones there? A. Yes, sir, I believe he was.

Q. Do you know what the objection was in taking it up? A. No, sir, I don't know. I think I knew at the time, but I didn't know that I had any concern with it, and I didn't take that notice I might have taken.

Q. Do you know when that pile was first driven that was driven in the water? A. No, sir, I don't know. I have been beside them when they were driving piles, but I didn't take notice, although I knew most of them on the harbor, and did a good deal of carting there.

Q. How were those piles driven? A. With a pile-driver floated in the water.

Q. Was it by hand? A. No, sir, by horses. It was a floating pile-driver.

Q. How was it brought around? A. Up around the channel, sir, I believe, and up on the north side. I wouldn't be sure of that, for I didn't see them while they got it there. I don't know that it was in the river before, but I expect so.

Q. State whether at any time you went down with Shapley to fix the place where the old shore was. A. Yes, sir, I told him I thought I could find it if I went down, and I went down and picked out the place. I asked him if that wasn't the place, and he said it was.

Objected to.

Q. How far was that place from this angle in the north pier, or from the Shapley pile? A. They said fifteen feet, but I don't know. I think it was pretty near it.

Q. Within fifteen feet of the angle? A. Yes.

Judge Higgins—Fifteen feet of where you said it was? A. Yes, sir, that was at the angle.

Judge Higgins—He said it was within fifteen feet of where they told you it was? A. Yes, I was within fifteen feet of the right place.

Judge Higgins—That's what they told you? A. Yes. I saw it afterwards.

Q. Were any piles driven on the firm land, that you know of? A. That I can't say.

Q. Did you see any driven there? A. I believe not. I don't know that I ever saw any driven there, not when they first started the pier.

Q. Have you told about Hubbard's man being drowned? A. No.

Q. After the south pier was put in, there was still water in the old channel south? A. Yes.

Q. How long did it remain there, to your knowledge? A. Until the sand bar went away. I can't tell how many years.

Q. Is there any fact that enables you to say that there was water south of the south pier for some time? A. Yes, because I know there was a man drowned there that lived with Mr. Hubbard. He drove in with a cart. I told him not to drive in there because there was a big hole there.

Q. Where was that hole? A. Well, I don't know. I don't know how far it is, but it is a good bit of aways from the pier, south, opposite the garrison, a little further down than where the pier is; I think it must be as much as forty feet below.

Q. Do you know how deep it was? A. No, sir, I don't. I know there was a hole there, and the man got in with his cart and horse.

Q. Did the horse drown? A. No, sir, the horse got out, but the man drowned.

Q. [Presenting "Greeley's map, No. 1."]—Here is a hole a little south of the fort and the south pier, that Mr. Gamble spoke of, is that in the neighborhood? A. Yes, I think it is, it was somewhere around there; I can't tell where directly, now.

Q. After the south pier was built, water still remained in the old channel of the river, until the old sand bar was carried away? A. Yes, it was in this old channel that the man got drowned.

Q. Do you know anything about three piles that stood at the south pier, where men used to fish? A. Yes, sir, I remember seeing piles there.

Q. Where did they stand? A. Right about in the river. I think the hole was a little further south.

Cross-examined by Mr. Van Arman.

Q. How early were you acquainted with that shore? A. In 1832, sir.

Q. Were you then engaged in drawing sand and water? A. I was not in '32. I commenced that in the spring of '33.

Q. How long did you continue engaged in that way? A. I should think six, or seven, or eight years.

Q. Doing the same kind of business? A. Yes.

Q. Getting water and sand from the same place? A. Yes, sir, from both sides of the river.

Q. Before the pier was constructed, you used to get it from both sides of the river? A. Yes, sir.

Q. After the pier was constructed, you got it more than before from the south side? A. No, sir. I got as much from the north side as the other all the time, but I got most from the south side. There is no mistake, because I hauled all that for the light house.

Q. Do you mean to say you got most sand and water from the north or south side, after the pier was constructed? A. No, sir, from both sides pretty near alike. I used to work on both sides every day, which ever came the handiest.

Q. You were just as well acquainted with the shore on the one side as the other? A. Yes.

Q. Where did you get the water? A. I used to get it in the lake, always.

Q. After the pier went out so that the river went between the piers, where did you get it? A. I used to get it as near North Water street as I could, and this other side we used to get it near Madison street.

Q. What street did you go down? A. North Water street, on the north side. There was no street on the south side.

Q. When you went down North Water street, did you go directly to the lake? A. Yes, sir, While they got the sand out there, I used to haul off a little and go around. There were no settlers along there from where Mr. Kinzie lived.

Q. Which pier was built first into the lake? A. The north pier. I think they started there after they got the river filled up.

Q. Which was commenced first? A. The south pier. I can't tell how far they had built before they commenced the north pier. I know they stopped the river up before they commenced the north pier. I think they stopped it up in '33, but I am not sure. I think it was in '34 it washed out. I think they stopped the old channel in the fall of '33.

Q. Did the new channel of the river make down through the sand bar in the fall of '33? A. No, sir, it didn't push through until spring, when the flood rose, then it went through.

Q. Did it all come through that channel the next summer? A. No, sir, some come through the other.

Q. What proportion? A. I can't tell. There was a great deal run through the other, or else they wouldn't have had to stop it up afterwards.

Q. When did they stop it? A. In the spring following.

Q. What time in the spring? A. I can't tell.

Q Are you sure it was that season of '34? A. Yes, sir, I think so. I know it was after the river was opened that they filled it up.

Q. How wide did the channel burst through between the piers? A. I don't know? I can't give an opinion. I saw it every day, but it was not my business. It was a pretty good width, but I didn't notice.

Q. Can't you give us your judgment? A. No, sir, I can't give no opinion.

Q. What time did they commence the construction of the north pier? A. Sometime in the summer time, but what time I can't tell. I know it was pretty warm weather—but what time I can't tell.

Q. How far out did they build it that year? A. That I can't tell you, sir? I know they built it out a long way.

Q. As much as one hundred feet? A. Yes. I should think more than two hundred.

Q. When they commenced building the north pier out into the lake, which side or pier was the new channel nearest to? A. I don't know that I ever minded that.

Q. Did it fill up the whole space between the piers? A. No, sir, I don't think it did. I don't know which it came nearest to. I was there when this north pier commenced, north of the pier, getting a load of water, at the time when they were starting to put the first crib down.

Q. Did the water run right along there, or off some distance? A. I don't know. I never would go to that place, except I had some business there. I didn't go there to see.

Q. How far was it from where they were at work to where you were at work? A. Maybe three rods. I don't know.

Q. You didn't have anything to do with the pier? A. No, sir.

Q. You say you know what the Shapley spile is? A. Yes.

Q. How do you know what it is? A. I don't know. I know they called it to be such.

Q. Who called it? A. I heard Mr. Jones and them talking about it when they pulled it up. That's all I know about it.

Q. You saw then about where the old shore was? A. Yes, sir. They pulled that pile up there.

Q. How near the old shore? A. I can't tell that.

Q. Can't you give anything like a judgment of how near to the old shore it was? A. It was within ten or fifteen feet, I think.

Q. Are you pretty positive that they pulled that pile up within ten or fifteen feet of the old shore? A. Yes, sir, I think so.

Q. The pile they pulled up was within fifteen or twenty feet of where you located the old shore when you went down? A. Yes, sir.

Q. Which way from that pile did you locate it? A. I located it a little further out into the lake—a little further east of that.

Q. You located the old shore ten or fifteen feet east of the pile Mr. Jones pulled up? A. Yes, sir, maybe ten feet.

Q. Did the other persons who were with you agree to that? A. Nobody said anything about it.

Q. How much has the land formed out on the old shore? A. I don't know. I have not been there for three years.

Q. When you were there, how much land had formed there in width? A. Well, I should think there was as many acres almost, as there was feet.

Q. How many feet or rods had it made out from the original shore? A. That I don't know, I think a couple of hundred feet when I saw it, or maybe more.

Q. That was three years ago? A. Yes.

Q. You think it had made that much? A. That much at most.

Q. How much less at most? A. I can't give any more than that.

Q. That is your best opinion? A. Yes, sir, I would rather be within it than go out too far.

Q. How far was it? A. I can't say whether it made more or less than that. I suppose it did make more. I can't say how much more.

Q. You knew where the old shore was? A. Yes.

Q. You knew where the new shore was? A. Yes.

Q. Couldn't you judge of the difference? A. No, sir, I didn't measure it.

Q. Can't you judge of any distance without measuring it? A. I didn't look at it for that purpose.

Q. Can't you judge of a distance without looking at it for that purpose? A. No, sir; I was not thinking anything about it at the time.

Q. You was there during the first year after the north pier was constructed, from summer till fall? A. Yes.

Q. How much did it come above water? A. I can't tell you.

Q. Can you tell anything about it? A. No, sir; it was made; that is all I know.

Q. Was it one, two, three, four, or five feet above the water? A. I can tell you it was a foot above water, any way.

Q. Was it more? A. I don't know.

Q. Was it not four feet above water? A. I don't know.

Q. You can't tell anything about that? A. No, sir. I know it was above the water. I can't tell how high.

Q. Was it covered that year or not? A. I don't know.

Q. Was it in '34? A. No, sir; there was a little sand bank up against it.

Q. But was it boarded or planked over that year? A. I don't know.

Q. How soon did you observe the sand begin to make behind the pier? A. Well, the spring following, when they commenced building.

Q. When did you begin to see the sand accumulate? A. I think I didn't see it until the spring following. I do not think there was much there the first year.

Q. Was there none there in the fall of '34? A. No; I don't remember seeing any in the fall of '34.

Q. Do you remember looking for any? A. No, sir.

Q. Was your attention called to the subject by anybody? A. No, sir.

Q. Was it not called to the subject at any time? A. No, sir.

Q. Had you any interest in seeing whether it accumulated or not? No, sir; it was a matter of no concern to me.

Q. Did you pay any more attention to that than to the mode of constructing the piers? A. No, sir. I did in the spring of '35, when I drove in. I noticed it then.

Q. But the first year, '34? A. Well, there was some. In the fall of '34 I didn't see any.

Q. Did you pay any more attention to the sand in '34, than to the construction of the pier? A. No, sir. The first I noticed it was when I drove into it.

Q. Did you ever drive into it more than once? Yes, more than five hundred times.

Q. For how long a time? A. Seven or eight years.

Q. Then in '35 you first drove into the sand next the pier? A. I took some sand out that spring.

Q. How do you know it was that year? A. Because that was the first year I saw it there. I was in for water, and I saw some

good sand, and when I saw good sand I knew the masons wanted it, and would go there.

Q. Where was that? A. Right up against the pier.

Q. Was it east or west of the Shapley pile, you saw taken up? A. Just about opposite to it.

Q. How far was that pile you saw taken up from the west end of the pier? A. I don't know, sir, I think the pier comes up the way the harbor shanty was, don't it, sir?

Q. It is not for me to say, but how far is that pile, you saw taken up by Mr. Jones, from the west end of the pier? A. It is as much as three hundred or four hundred feet, I think.

Q. When you took the sand out it was right opposite that pile? A. Yes, somewhere about the first or second crib.

Q. You say the pile was taken out some three hundred or four hundred feet from the west end of the pier? A. I don't know as I understand you.

Q. How far from the west end of the pier is the pile you saw taken out? A. I don't know. I call the west end of the pier where the harbor shanty was.

Q. How far west from the place where they commenced build- it in '34, was the pile you saw taken out? A. I don't know. It is right on the place.

Q. How far from it? A. I can't tell how far, I didn't measure it. It is about right on the place as near as can be.

Q. You say that pile is just about the place where they commenced to build the pier in '34? A. Yes, I don't know whether it is the first or second, or third crib. It is one of them. If I was to go down, I could tell, I believe.

Q. When you took out the sand in '35, it was right opposite that pile? A. Yes, it was about there.

Q. Was it east or west from there? A. It was not west of that any way, because there was a gulley run through there, and had water.

Q. Then it was either opposite or east of that point? A. It was somewheres about there. I can't tell how far from the spile.

Q. That is the means you have of knowing how much land was made. A. Yes, sir. It's no interest of mine, not a bit.

Q. You can't state how far it was from the spile which you took out of the sand? A. No, sir. It was within ten feet, any ways, of it.

Q. Did you notice at that time that it was within ten feet? A. No, sir, but I know the way it lay.

Q. You didn't know anything about the spile at that time? A. I knew there was a spile called that then. I knew there was a pile having a name for it; I didn't know what they called it.

Q. You knew there was spiles along there where you got the sand? A. Yes.

Q. You didn't think of any particular one when you got the sand? A. No, sir.

Q. You didn't hear of the Shapley spile until the last trial? A. No, sir. I knew there was one, I didn't know the name. I saw some piles there.

Q. What interest had you to see the sand and how far it was? A. Because I thought it was good sand, and I always wanted to get good sand. I know it was right where they commenced the pier.

Q. What time in the year was it? A. I should think it was in April or in May—sometime there.

Q. Where did you take the sand? A. Somewheres on the north side.

Q. Can you tell to whose house? A. No, sir, but I should think if I was at home I could tell you; I have it down in a book.

Q. Were you there in the spring of '36? A. Yes.

Q. Where was the sand then? A. It was a long way out in the spring of '36. I don't know how far from the old shore; I didn't take notice of it.

Q. What do you mean by a long ways? A. It was a long ways to what it used to be. It was as much as a couple of hundred feet, I should think, in the spring of '36. It was one hundred and fifty feet any ways.

Q. When did that one hundred and fifty feet make? A. It was made in the fall of the year.

Q. What time in the fall? A. I don't know.

Q. Did you ever notice in what kind of weather it made fastest? A. Yes, sir; it was in very rough weather.

Q. What sort of weather did you have in the fall of '38? A. I don't know, sir. We used to have pretty rough weather sometimes.

Q. What sort in the fall of '34? A. I don't know.

Q. How far out was it in the spring of '37? A. It was still further. I can't tell how far.

Q. Give us your best judgment? A. I can't give no judgment on that at all. I can't tell how much in '36 or '37, but I know it made a great deal.

Q. Did it make the most in '36 or '37? A. I can't tell that. I know it didn't make but a very little the first, but a great deal the next two years.

Q. How much do you mean by "a very little?" A. Why, it didn't fill up much.

Q. How much did it fill up the first two years—that is to August, '36? A. But I go from spring to fall. I don't go from fall to spring. There was a vessel ashore there at the time.

Q. You think they lost the scows at the same time the vessel was on the shore? A. I think so. I am not sure.

Q. What fall did they lose the scows? A. I can't tell that any more than nothing.

Q. Are you a good judge of distances? A. I don't know.

Q. How far do you think it is to that wall yonder? [the wall of the court room.] A. I don't know. It is thirty feet.

Q. Is it not more? A. I don't know. If I was in the country, going over miles, I could tell better. I can't tell feet at all. I can tell miles.

Q. Have you a distinct recollection of the years, so as to distinguish one from another? A. No, sir. My memory is not so good as it was four years ago. I could think of everything then.

Q. It is impaired now? A. Yes, sir.

Q. What was the shape of the shore before the piers were constructed, until 1832? A. I think about where the river was it seemed to be a little the widest. It rather run in towards Lill's brewery, and rather towards Madison street. It looked up towards Lill's brewery a little in west, and the other side came in a little ways too. It used to come in by Madison street.

Q. Immediately south of the foot of Water street, what was the shape of the shore? At the point where you drive down to get water, as you started south, which way did you go, east or west? A. I have been both ways.

Q. Which way did the shore go? A. It bent in a little to the west. I think, looking both ways, it bent in a little. I knew I was up there on the shore; I was at it before they cut it open out there, and I said to the men that that was the widest place that they were to cut through.

Direct examination resumed by Mr. Arnold.

Q. Do you remember where the buildings or shanties were where the men worked on the harbor? A. Yes.

Q. Was there a road from there down to the pier? Yes, sir. I drew the things up to the shanty myself, when they first moved on to the work.

Q. You got your water at the west end of the pier? A. Yes, in the lake at the north side of that pier.

Q. Do you remember when the first crib was put partly on the shore and partly in the water? A. I remember seeing some men digging in the water.

Q. How far was it from that place to where you got your water? A. I should think it was within two or three rods.

Q. How far had the new land made out above the water from that place in '35? A. I don't know.

Q. How far from that first crib was the sand in 1835, where you got your water and noticed this sand? A. I should think it was, may be, thirty-five or forty feet. It was somewheres thereabouts.

Q. Here was where you got this good sand for the masons? A. Yes.

Q. You spoke of a pile being taken up? A. Yes.

Q. When you went down there, and they were pulling up the pile, was something said by those at work about its being Shapley's pile? A. Yes.

Q. Did you look yourself to see whether that was the farthest pile driven in the crib westward, on the north pier? A. No, sir, I didn't look. I went by just what they said.

Q. You spoke about a gully being near this clean sand; was that gully east or west of the clean sand? A. It was the west side, sir.

Q. Did any water pass through that gully? A. Yes, sir, there was water passing through at that time.

Q. Into the river from the lake? A. Yes, sir.

Second cross-examination by Mr. Van Arman.

Q. Who told you that the pile taken up was the Shapley pile? A. Some one that was there.

Q. It was at that pile you fixed the shore? A. It was thereabout. That is where they commenced the harbor.

Q. It was at that pile that you fixed the old shore? A. Yes, sir.

Q. It was right there that you got the sand? A. I might say it was right there. It was somewhere in that neighborhood.

Q. Is that as near as you can fix it? A. Yes, sir.

GEORGE W. DOLE, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. State whether you are acquainted with the locality of water lot 27, in Kinzie's Addition. A. I believe I am, or was. I purchased it at the sale in '33.

Q. How was it situated in reference to the river? Where did its east and west lines, running south from North Water street, strike the bend of the river? A. My impression is that the east line ran down some thirty feet on the bar. The west line ran into the river, so that the bend of the river cut into the lot some twenty or thirty feet. It was half of the lot at the bend where the bend of the river came around.

Q. Do you mean the east or west line? A. I mean the west line, leaving some thirty or forty feet of the lot on the bar. I can't tell exactly; that is at the bend there. My impression is, that the ast line followed down the bar—I can't tell how many feet—and me into the river again.

Q. Is not that the west line? A. No, sir; the west line struck bar again, it is my impression, across the south pier. I got t from selling the lot in 1836. When I sold it, my impression that the west end running across would strike the bend. I w I sold the lot in '36, and the purchaser went down with me, by looking across there was some land on the south side of pier which I claimed belonged to this lot; but whether there s the full complement of sixty feet on the bar or not, I can't

tell. I think it struck the pier so, because there was land on the bar across the pier.

Q. The east line of 27 would strike across on the bar and leave land belonging to 27? A. Yes, sir, the west line was cut by the bend of the river about half way; that is, I think, from twenty to thirty feet. Before the construction of the pier in 1833, at the sale of the lands, they had a map drawn there, and I bought by map. I was at the sale, and purchased two lots there—either 18 or 19—for Mr. Newberry, of Detroit. The map was there that Mr. Snow laid out the lots by, who surveyed the lots and made the map. It was the same month he laid out the lots, and made the map, that this sale took place. It was in February.

Q. [Presenting original map]—Is that the document?

Question objected to as irrelevant, and objection sustained.

Witness—I looked at the ground in '36, when I sold it. At the time I purchased it, there were no piers there. I didn't claim them to be worth anything, but after the pier was made, I sold the lot, and thought if it had a foothold on the sand-bar, it would be valuable. Then I went down with Mr. King, to whom I sold it, and my impression was that the lines produced across the pier and the sand-bar, would take in some of the sand-bar.

Q. You knew where your east line was? A. Yes, sir, I knew where the lot was. I was doing business there. My warehouse was on lots 28 and 19, nearly opposite the Garrison.

Q. Where was Mr. Kinzie's warehouse? A. It adjoined mine. I was on 18 and 19, he was on 20 and 21.

ISAAC STRAIL, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. Have you resided in Chicago for some time? A. I have since July, 1836.

Q. State whether you made the mode of the formation of the accretions there on the north side, a subject of observation, and if so, state how the accretions formed. A. Well, I was in the habit of going to the lake shore frequently. At the time I observed an accumulation there, from time to time, of sand.

Q. In what year? A. Well, in '37, and, in fact, in the fall o '36, I observed it likewise, but not so much so.

Q. When you first observed it in '36, had there been any co siderable accretion made? A. I don't think the accumulation h been as much from the time I first observed it, up to the spr of 1837, or rather in the winter of '37, as it was after that.

Q. The formation was more rapid after that than it was befo A. That depended a good deal on the season. Sometimes blow would make it accumulate as much as in ordinary wea it would in six months. I used to observe that in very sto blows, the accumulation would be more. My attention was dra to it in '37 very particularly. I used to go in the lake very f

quently bathing of evenings, and going from bar to bar that was under water.

Q. How many of these bars were there? A. I think I used to go to about the second one. That was about as far as I could risk to wade to.

Q. State the position of the bars, and the process of formation? A. These bars seemed to accumulate under water, and run from the shore to the pier. That was about the way they used to form and quite a little ravine between them. They began in the water, and extended out in the water. I think they were the foundations of the accretion. The first accumulation commenced under water at the bars, by bars, and then it filled up between them. The accumulation likewise, used to arise from every blow. The sand on the surface would be blown up against the pier, falling in this place, and a great deal of sand would roll up against the pier that was dry. In fact it would drift like snow, and pile up considerably. At the same time, there were these little ridges and ravines under water where the sand was plain. I recollect one or two that were very extensive in 1836 and '37. That was quite a distance from what was called the lake shore then. I recollect one of these ridges—

Mr. Van Arman objected to any opinions.

Witness.—I made that remark in reference to the formation from observation.

Q. That was the fact, was it? Yes, sir.

Q. What was the fact? A. The accumulation of the bars under water, extending out in the lake, as I observed them, were continued out towards the end of the pier eastward. The formation seemed to be commencing under water, and likewise filling on the surface from every blow, from the blowing of the dry sand on the beach.

Q. State whether these bars, commencing under water, would rise up out of the water? A. Yes, sir, they would commence under water first, and then they would crop out. They would come up to the surface.

Q. Would there be any water between them and the shore? A. Yes.

Q. State how that space between the shore and this ridge com- out of water would be filled up? A. It would be filled up the seas rolling over and rolling the sand in, and from the king in of the dry sand likewise. They would be filled up the motion of the sand and the swells at the same time. re were apparently accumulations going on under water of es.

. Was there not more than one of the bars at the same time? I have discovered two, sir, at the same time. One would be rer the surface than the other. It would be deeper down and

farther east. That would be about as far as I could observe it into the lake.

Q. Were there bars yet beyond? A. I don't know from any certain knowledge, except from seeing my companions swim to them and standing on what they said was the bar. I have seen them standing on them, and they had to swim to get to them.

Q. I understand you to say that the process of formation was much more rapid after you came here than it appeared to have been before—that you found the quantity much greater from year to year than the quantity you found when you came? A. I judge so, sir, from the appearance of what I observed at the time. I couldn't judge what it was previous to 1836.

Q. But you know how rapidly it formed after you came? A. Yes, sir, I think I know. I am pretty certain as regards that.

Q. [Presenting Allen's Map of 1837.] (Ex. C.)—State whether this map of Capt. Allen's corresponds with your recollection as to the direction and formation of the bars, and the accumulation, and how it corresponds.

Objected to by defendant's counsel, as leading the witness, inasmuch as he had never made the map, nor done any action described therein. Objection overruled. Defendant's counsel excepted.

Witness.—Well, sir, I think it corresponds with my recollection.

Q. With your recollection of the formation of the bar? A. Yes, sir, I think as I stated, and as I see here, these bars near the shore crop out near the surface of the water, and that, I think, was my idea before.

Q. That agrees with your knowledge? A. Yes, sir.

Q. What of those further out? A. Well, they are deeper under water. There is more water to the surface?

Q. What of the direction of the bars? A. Well, the direction of the bars was from the lake shore extending out to the point of the pier, extending easterly as they came towards the point of the pier.

Cross-examined by Mr. Van Arman.

Q. What's your occupation? A. I was merchandising at t time, on the north side.

Q. How far from the lake? A. I was on block 1, near D born Street.

Q. What has your employment been since? A. I have merchandising up to six years ago.

Q. What since then? A. Well, I was trafficking here in t in various ways. For the past two years I have been on a f or occupied with that.

Q. What was your occupation before 1836? A. Clerking.

Q. Where? A. At Syracuse, N. Y.

Q. What time did you come here in '36? A. I think it was about the middle of July, '36. I don't recollect the day precisely.

Q. You didn't go down to take any notice of this pier until late in the fall? A. Yes, sir, I went there in the summer of 1836.

Q. I understood you to say you didn't notice it till fall. A. I said I didn't notice so particularly.

Q. You didn't notice it all? A. Yes, sir, but not so particularly. I didn't visit it so frequently in 1836 as in 1837.

Q. How many times were you there in '36? A. Probably in the month of July, two or three times.

Q. Were you there after July in 1836? A. Yes, I landed there once as I came from Milwaukee. I think about the first of August, 1836. I came on a schooner from Milwaukee, and I left the schooner at the north pier, somewhere near the centre of it, I think.

Q. You went from there home? A. I went from there to the Tremont House.

Q. What sort of weather was it? A. Smooth, calm weather.

Q. What sort of weather was it the summer previous, when you were there? A. Smooth weather.

Q. What kind of weather in July? A. It was pleasant weather —colder. It was calm when we went there in the fall of '36. There used to be some blows when we got off the schooner. That was in August when we left the schooner.

Q. Were you there in the fall of '36? A. Yes, probably half a dozen or a dozen times.

Q. Were there any storms that fall? A. Yes.

Q. Did you ever notice the situation of the accretion there when there was a storm blowing in the fall of '36? A. I have not noticed it when the storm was blowing, but I have after the storm.

Q. What did you notice after the storm? A. You could notice nothing more than the usual appearance of the thing.

Q. Did it make any difference when there was a storm blowing the fall of '36? A. I don't think it would make any difference two or three days. I think the greatest accumulation was by winter storms.

. After these storms in the fall of '36 did you notice any ac-ons? A. No, sir, nothing to observe particularly.

Did you notice it? A. I don't know whether my attention called to it?

Did you notice it? A. I at the same time would be there.

Will you please to answer my question, whether you noticed accretions forming in the fall of '36? A. O, yes, I noticed because they were accumulating constantly.

Q. Did the storms form accretions, or didn't they, in the fall of '36? A. Well, I think they probably would.

Q. Did they, or didn't they? A. I think they were naturally filling it up.

Q. Did they, or didn't they? A. I think they did.

Q. Don't you know? A. I know from visiting these points where the sand was making.

Q. Will you answer; did they, or didn't they? A. I think they did.

Q. Do you not know they did? A. I know they did in the fall of '36.

Q. You spoke of accretions being formed by waves which would raise the sand out of water, over the bar, touching the shore. Did you notice that in these storms? A. Yes, you would notice this during these storms—not in the storms, but after the storms. I didn't go down to notice them in the storms, because I think the storm would prevent any one going to notice them. I didn't notice them while the storm was going on. I noticed them after the storm.

Q. You say in '36, when there was a storm, you noticed an accretion afterwards? A. Yes.

Q. Did that bear a proportion to the length and violence of the storm? A. Yes. After a very severe storm, and one that would continue any length of time, there was an appearance of an accretion more than there would be in not so severe a storm.

Q. Did the accretions bear a proportion to the length and violence of the storm? A. Yes, sir.

Q. That is, the longer and the more violent the storm, the greater the accretion? A. Yes; that I noticed in the fall of 1836.

Q. How much increase did you notice in the fall of '36? A. Well, I don't know as I noticed any in particular, as regards the distance of the accretions right on the shore. I don't know as I noticed the distance.

Q. Can you form any estimate, then, of the land or accretion that formed on the shore in the fall of '35? A. From July to along in the fall sometime of '36, I noticed there was an accumu lation.

Q. How much? A. Well, say for instance on the bars; th would be the most correct idea for me to make an estimate of bar under water—by the depth.

Q. I didn't ask for an estimate of the land under water, but land above water on the shore? A. No, I don't think I c give you any idea of that. It depends on whether a man on it.

Q. Do you know anything about the rate of accretion be 1836? A. No, sir.

Q. Go on to '37; how much was made there that year? A used to go down frequently in the summer of '37.

Q. Had there been any change in the pier from '36 to 37? A. Yes.

Q. What? A. Oh, they were at work on the pier extending and leveling up, I think. The work was going on.

Q. Did they extend the pier at all from '36 to '37? A. I think they did.

Q. Between July or August, '36 and '37? I think they did. They were at work on the north pier.

Q. Are you pretty positive that they were extending the north pier, from July, '36 to the end of '37? A. Yes, sir, I'm pretty positive. My attention was not called so much to the pier.

Q. It was attracted to the sand bar? A. No, sir, I went on the pier and saw the work going on. They might have gone 500 feet I think. I don't know how much they did extend it in '36, but in '37 they extended it some. They were extending it in both years.

Q. You can't state in which year they extended it most? A. No, sir.

Q. What did you observe in regard to the increase in '37? A. I observed it was extending out the same as the year before.

Q. Did you observe any difference between that and the former year? A. I think it was extending out, whether it was more rapid or not, I don't know. I think that in the winter of '36 and '37 it was extended out considerably.

WILLIAM H. STOW, called by the plaintiff, being duly sworn, was examined in chief by Mr. Arnold, and testified as follows:

Q. When did you come to Chicago? A. In 1835—the first time in July. I remained but a short time—only a few days—and returned to Syracuse. I came here again in October, 1835.

Q. When you were here in July, 1835, were you on either of the piers? A. No, sir.

Q. Were you in October, '35? A. I was on the pier in November, '35. I recollect their building it. I remember being on it.

Q. Do you remember when the work began on the lake shore, on the north pier, in 1835? A. No, sir, I can't tell the location.

Q. Do you remember in November, '35, in what manner you went up from the dry land on to the pier? A. There was a timber there. The pier was up some four or five feet, probably, from a lower pier or dock, and there was a long timber—some twenty or thirty feet—that reached out on the sand by the side of the other pier.

Q. Did that timber extend directly west, or northwest? A. Northwest, along near the side of the dock. It was a lower dock. It was a dock, I think, west of the pier. It was a low pier or dock like, that lay there, and this some three or four feet higher than the other.

Q. How long was that low piece of pier you spoke of, which extended from the main pier north? A. No, sir, it was one in the river running up and down beyond the end of the pier west. There was a short pier running north—a little low pier. The main pier ran east and west. This little pier ran north. There was a few timbers laid and filled with stone—not much of a pier —an L like, running out.

Q. How long was that? A. I don't know, it didn't show much. It showed in the main pier, I can't tell the length.

Q. What, if any thing covered it up on the north end? A. It was sand that covered it up on the north end. When it came up alongside of the main pier it was not covered with sand.

Q. What did that end rest on? A. I suppose it rested on sand and water.

Q. Was the water visible there at that place? A. Yes, it was when there was a storm.

Q. How far was that little L from the west end of the main pier? A I shouldn't think it was at the end. I should think it was a little further east, may be ten feet, may be not so much. I don't know. It was the first crib, the first rise we went on to.

Q. You spoke of a timber lying on the main pier, extending across northwest to the land. How long was that timber? A. I should think 20 or 30 feet.

Q What was the object of putting that timber there? A. I couldn't say. We went up on it, I know I did, from the sand to the pier.

Q. Was there any violent storm in the fall of '35? A. I know there was a storm from the seventh to the middle of November; a heavy storm.

Q. What were the effects of that storm upon the water at the west end of the pier? A. Well, I was there a number of times, and some of the time when a heavy storm struck it, and it passed through. The water washed over this low pier into the river.

Q. Did it pass through that first crib, or around the end? A. Around the end.

Q. When it washed through was there any land above water alongside of the pier to the east of that little L? A. Well, I couldn't tell.

Q. The weather was rough? A. No, it was calm. I nev took notice of any. You see it was a beach there, and this v a storm that threw it around, and it washed around and appea to fall in the river. I know Mr. Sherman and others drev seine out on this point—they drew for fish. They hauled it to this pier, opposite the river, where the sand either washed or fell in on the south side of the pier, so that the river was o forty or fifty feet wide, and the water went nearest the south pi leaving a kind of belly of sand down between the piers. I kn

I took scows up there that year. It was a large body of water, and there was timber—large logs floating. That was right south of this first pier on the inside of the harbor, between the north and south piers.

Q. You speak of these storms washing the water through and over the L into the river. What was the width of the stream of water running from the lake into the river? A. I couldn't tell you. It dashed mostly against the piers, and they threw the water over. It blowed down from the northeast, and piled it up in there, but this was in a blow in the fall.

Q. Did you see them at any time down there, filling up where that L was, and repairing it? A. No, sir.

Q. You came in October. Do you remember of being on the north pier before the storm you speak of? A. No, sir, nor on it until after that storm—about the middle of November.

Q. From that place where the L was, east, was there any dry land? A. I have no recollection of seeing land east of that L at any time. In calm times, I have seen the land extending east.

Q. When? A. Oh, I don't know.

Q. Did you that fall? A. I think I did that fall.

Q. How far from that L was it? A. I could not say—it was a beach like.

Q. Where was the edge of the water? A. I couldn't say, but I know that the beach run below, and there was a beach twenty or thirty feet east, may be.

Q. State how many times you were there in November, '35, and what called you there? A. I had some iron and coal that came in in vessels, and I was there in scows getting it up the river. The iron was on board of vessels that lay out at the end of the pier, and couldn't get in, and I use to walk down the pier to get to my vessels. This was during November, '35.

Q. Do you remember whether you could get on the north pier, dry shod, from the land, without going on this timber? A. I think I could.

Q. At what point? A. At this point where this jog was in the pier. When there was no blow the timbers, I think, lay like steps, so that you could go up on it.

Q. They hadn't built the pier west of the old shore, at that time? . No, sir, they didn't build it until sometime afterwards.

Q. Have you ever noticed that jog or angle since? I never iced that angle. I know there was an angle somewhere on the r, but never took notice at the time.

Q. That point was at the angle where the old lake shore was, ere they put the first crib? A. I don't know. I know there s a bend in the pier. I think it was near the high pier where I ke of going on with this timber.

Q. Do you know anything in regard to the south pier? A. I as on the south pier, on that island, frequently, in 1836. I was

not on it in 1835. There was a man named Hoyt, and one named Smith, occupied a building there for Henry Moore. I was over there a good many times.

Q. How did you get to the sand-bar? A. I generally walked across on the south pier. across the river. They had a boat that used to go back and forth across the river.

Q. How far from the old stockade was the west bank of the river? A. I should think fifty feet.

Q. How wide was the river? A. Two hundred feet, probably.

Q. How wide was the sand-bar? A. I should think three hundred feet certain.

Q. In what position was the south pier on the sand-bar, in reference to this jog or angle, did you notice the manner of constructing the north pier? A. No, sir, it was built when I came. I know there were piles in the river, I supposed driven in to keep it from going down the stream, when they sunk it there.

Q. After the construction of the pier was there still water in the bed of the river south of the south pier in 1835? A. Yes. I think a man of Mr. Hubbard's was drowned there, two years afterwards, in 1838.

Q. Where? A. I should think down where the Central Depot is now. I should think four hundred or five hundred feet from the south pier. There was a deep hole there, it was filled below, and it washed in and filled up naturally.

Q. You spoke of some houses on the sand-bar, how long did they remain? A. They went off, or tipped over in the fall of '36. I think it was in a blow, a heavy blow.

Q. Was there any vessel wrecked that you remember, in the fall of '35? A. I think there was a vessel that went ashore down below on the beach. I am not sure but there were two of them.

Q. Do you remember when the "Newburyport" was wrecked? A. It seems to me that it lay right in close by the south pier, I don't remember when. I think I saw her lying there on the south side of the south pier, close in.

Cross-examined by Mr. Van Arman.

Q. Were you ever sworn before in this case? A. I don't recollect.

Q. You can't remember? A. I don't. I don't believe I was. I was subpœnaed; but I have forgotten.

Q. Wasn't you sworn and asked, on your oath, to say whether you knew anything about the north shore in '35? A. I don't recollect.

Q. And didn't you say you didn't know anything about it? Not to my knowledge. I don't recollect being sworn in the former trial.

Q. Then this book [the printed Bill of Exceptions, with the report of evidence of the trial of 1853] must be very false in the

account it gives of your testimony? A. I couldn't say. I know I was subpœnaed.

Q. Perhaps if I read it to you it will refresh your recollection: "I came here in 1835. The piers were built out several hundred feet at that time; in the fall of 1835 the river was three hundred feet from fort; one hundred and fifty across river; near two hundred feet across sand-bar; have been down near fort several times this season; the angle in the pier was near the river. * * I know nothing of north shore." Does that help you to recollect that you were sworn? A. It might; I don't recollect now.

[Witness takes the book and reads over the record of his testimony himself.]

Q. What is your recollection now? A. Well, my recollection is that as far as that says I was sworn, I don't recollect still.

Q. You have no recollection of being sworn at all? A. No, sir, not at all.

Q. Of course you can't say whether, on that occasion, you swore as I asked, or not? A. I can't, sir.

Q. Didn't you swear on the former trial, when inquired of about the condition of that north shore, that you didn't know anything about the north shore? A. I don't know. I don't say now that I know anything about the north shore. I might have said so then.

Q. You do say so now? A. Yes, sir; I don't know anything about the north shore, so far as the shore of the lake is concerned.

Q. Didn't you testify, just now, that you had some impression that it was thirty feet from some point where there was water, to the lake? A. No, sir. I said I thought it might be thirty feet from this angle to the water.

Q. Don't that relate to the north shore? A. Well, it might in one sense, and it might not in another. It might be fifty feet and it might not be ten. I state my impression.

Q. Was that meant to convey any definite idea? Do you mean it is ten or fifty feet? A. Yes, sir, it might be either one of them.

Q. Or more than either? A. Yes.

Q. In what sense do you mean that your statement, as to the stance of the water, was not in regard to the north shore? A. cause I didn't take particular notice of the water.

Q. Was your attention called to the subject at the time? A. sir, it never has been until now.

. Do you still say you don't know anything about it? A. I 't more than a casual observation.

. Did you make a casual observation of that? A. I might in ing along.

. Did you make any observation that you remember of the ance between that little pier and the shore? A. No. I don't ow as I did any.

Q. Neither casual or otherwise? A. No, sir, I only judge from the water passing through there in a blow.

Q. In 1835, in November, you was on this little pier built north of the main pier? A. No, sir, I was on the main pier.

Q. You didn't go on the little pier at all? A. No, sir.

Q. How did you get on the main pier? A. I went on a timber that laid off on the sand.

Q. Which side did you go on? A. West of it.

Q. You went on the main pier at a point west of the little pier on a timber that extended from the sand? A. Yes, sir, west of the elbow.

Q. I am talking of that L. You went on a timber that lay there to the main pier? A. Yes.

Q. What was under the timber? Was any water? A. Sometimes there was.

Q. Was there at that time? A. I went over it a great many times. Sometimes I went over above, and sometimes on the timber.

Q. Did you at any time see water under that timber between there and the pier? A. Yes, about twenty feet.

Q. You say there was about twenty feet of water there? A. Yes, may be thirty.

Q. How wide was the passage of water that you saw at the widest you saw it? A. It might be ten feet.

Q. You say that water came in over the shore, from the northeast. How far from the pier, north, was the point where the water came over the beach? A. It was right on the side of the pier where it run around.

Q. You say the water came from the northeast. How far north of the pier did it break over? A. It dashed against the pier and forced it over that way.

Q. Was there a pool of water that extended one hundred feet or more, north of the pier, inside of the shore, formed by the water beating over the beach? A. There was a low place over near the blacksmith shop.

Q. I speak of this pool of water that formed in that storm. Do you remember it? A. Not that I know of.

Q. Where did the water come in? A. It dashed against th pier and threw it over and around.

Q. Over what? A. Over this L pier—this low pier, into t river. It passed right over and around into the river, across t little low dock; and frequently the storm threw it right over pier, so that it went all over and against the pier.

Q. How high was the main pier at that time? A. I coul say—may be six or seven feet.

Q. How long did you remain in Chicago? A. I have rema ed here ever since.

Q. Were you down, the fall following, on the pier? A. Ye

Q. How much did the land make during that next year? A. I should think it made considerable more—may be one hundred feet. I couldn't judge.

Q. Didn't it make twice that? A. It might. It would wash up, and, when it receded, would show quite a beach.

Q. Do you pretend to know anything at all about the accretion in '35, and '36? A. No, sir, no more than I know it increased a large amount in a number of years.

Q. During these two years didn't it increase a large amount? A. I don't know what it was in '35, so as to judge how much it increased in '36, and '37. I know it increased in '36, and '37.

Q. How much? A. Probably one hundred or two hundred feet in '36' and '37. That's as near as I can fix it.

Q. Did you have anything to call your attention to the progress of the accretion? A. There never was anything to call my attention to the accretion. I had to go to the harbor. I was doing work for Lieut. Allen.

Q, You say, in the fall of '35, the sand had blown in and formed a large mass? A. The water went in and filled up a large part of the bed of the river.

Q. Didn't you know that it had never been deepened out and that that was the original sand in the bed of the river? A. I supposed that the river had washed it wider than that.

Q. You supposed that that mass of sand was driven there by the lake? A. I judged that the wind and the water had driven a portion of it right over the pier.

Q. Was there any low pier there in 1835? A. There was a low dock or pier right west of the high pier, and the sand would drift there like snow.

Q. How long was that low pier? A. I should think it reached up to Kinzie & Hunter's warehouse. It was a pier that reached from the end of the pier up to Kinzie's warehouse. It is a number of hundred feet long. It may be it didn't reach all the way up.

Q. That was in '35? A. Yes,

Q. Had there been any low pier at all built in '35? A. I can't ay.

Q. At the time you were there in 1835, in the fall, was there y low pier up west at all? A. I can't say. There was a low ck or pier right west of this main pier.

Q, You can tell the distance? A. No, sir.

Q. Was it a hundred feet? A. I can't say, It may be so to nzie's warehouse and may be not. They generally went down the sand north of this.

Q. How far did this sand-bank extend east of this jog—the h point? A. I couldn't say, not a great ways east above ter.

Q. How far? A. It might be thirty or forty feet.

Q. What fall did they lose the scows? A. I can't tell that any more than nothing.

Q. Are you a good judge of distances? A. I don't know.

Q. How far do you think it is to that wall yonder? [the wall of the court room.] A. I don't know. It is thirty feet.

Q. Is it not more? A. I don't know. If I was in the country, going over miles, I could tell better. I can't tell feet at all. I can tell miles.

Q. Have you a distinct recollection of the years, so as to distinguish one from another? A. No, sir. My memory is not so good as it was four years ago. I could think of everything then.

Q. It is impaired now? A. Yes, sir.

Q. What was the shape of the shore before the piers were constructed, until 1832? A. I think about where the river was it seemed to be a little the widest. It rather run in towards Lill's brewery, and rather towards Madison street. It looked up towards Lill's brewery a little in west, and the other side came in a little ways too. It used to come in by Madison street.

Q. Immediately south of the foot of Water street, what was the shape of the shore? At the point where you drive down to get water, as you started south, which way did you go, east or west? A. I have been both ways.

Q. Which way did the shore go? A. It bent in a little to the west. I think, looking both ways, it bent in a little. I knew I was up there on the shore; I was at it before they cut it open out there, and I said to the men that that was the widest place that they were to cut through.

Direct examination resumed by Mr. Arnold.

Q. Do you remember where the buildings or shanties were where the men worked on the harbor? A. Yes.

Q. Was there a road from there down to the pier? Yes, sir. I drew the things up to the shanty myself, when they first moved on to the work.

Q. You got your water at the west end of the pier? A. Yes, in the lake at the north side of that pier.

Q. Do you remember when the first crib was put partly on the shore and partly in the water? A. I remember seeing some men digging in the water.

Q. How far was it from that place to where you got your water? A. I should think it was within two or three rods.

Q. How far had the new land made out above the water from that place in '35? A. I don't know.

Q. How far from that first crib was the sand in 1835, where you got your water and noticed this sand? A. I should think it was, may be, thirty-five or forty feet. It was somewheres thereabouts.

Q. Here was where you got this good sand for the masons? A. Yes.

Q. You spoke of a pile being taken up? A. Yes.

Q. When you went down there, and they were pulling up the pile, was something said by those at work about its being Shapley's pile? A. Yes.

Q. Did you look yourself to see whether that was the farthest pile driven in the crib westward, on the north pier? A. No, sir, I didn't look. I went by just what they said.

Q. You spoke about a gully being near this clean sand; was that gully east or west of the clean sand? A. It was the west side, sir.

Q. Did any water pass through that gully? A. Yes, sir, there was water passing through at that time.

Q. Into the river from the lake? A. Yes, sir.

Second cross-examination by Mr. Van Arman.

Q. Who told you that the pile taken up was the Shapley pile? A. Some one that was there.

Q. It was at that pile you fixed the shore? A. It was thereabout. That is where they commenced the harbor.

Q. It was at that pile that you fixed the old shore? A. Yes, sir.

Q. It was right there that you got the sand? A. I might say it was right there. It was somewhere in that neighborhood.

Q. Is that as near as you can fix it? A. Yes, sir.

GEORGE W. DOLE, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. State whether you are acquainted with the locality of water lot 27, in Kinzie's Addition. A. I believe I am, or was. I purchased it at the sale in '33.

Q. How was it situated in reference to the river? Where did its east and west lines, running south from North Water street, strike the bend of the river? A. My impression is that the east line ran down some thirty feet on the bar. The west line ran into the river, so that the bend of the river cut into the lot some twenty or thirty feet. It was half of the lot at the bend where the bend of the river came around.

Q. Do you mean the east or west line? A. I mean the west line, leaving some thirty or forty feet of the lot on the bar. I can't tell exactly; that is at the bend there. My impression is, that the east line followed down the bar—I can't tell how many feet—and came into the river again.

Q. Is not that the west line? A. No, sir; the west line struck the bar again, it is my impression, across the south pier. I got that from selling the lot in 1836. When I sold it, my impression is, that the west end running across would strike the bend. I know I sold the lot in '36, and the purchaser went down with me, and I by looking across there was some land on the south side of the pier which I claimed belonged to this lot; but whether there was the full complement of sixty feet on the bar or not, I can't

tell. I think it struck the pier so, because there was land on the bar across the pier.

Q. The east line of 27 would strike across on the bar and leave land belonging to 27? A. Yes, sir, the west line was cut by the bend of the river about half way; that is, I think, from twenty to thirty feet. Before the construction of the pier in 1833, at the sale of the lands, they had a map drawn there, and I bought by map. I was at the sale, and purchased two lots there—either 18 or 19—for Mr. Newberry, of Detroit. The map was there that Mr. Snow laid out the lots by, who surveyed the lots and made the map. It was the same month he laid out the lots, and made the map, that this sale took place. It was in February.

Q. [Presenting original map]—Is that the document?

Question objected to as irrelevant, and objection sustained.

Witness—I looked at the ground in '36, when I sold it. At the time I purchased it, there were no piers there. I didn't claim them to be worth anything, but after the pier was made, I sold the lot, and thought if it had a foothold on the sand-bar, it would be valuable. Then I went down with Mr. King, to whom I sold it, and my impression was that the lines produced across the pier and the sand-bar, would take in some of the sand-bar.

Q. You knew where your east line was? A. Yes, sir, I knew where the lot was. I was doing business there. My warehouse was on lots 28 and 19, nearly opposite the Garrison.

Q. Where was Mr. Kinzie's warehouse? A. It adjoined mine. I was on 18 and 19, he was on 20 and 21.

ISAAC STRAIL, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follows:

Q. Have you resided in Chicago for some time? A. I have since July, 1836.

Q. State whether you made the mode of the formation of the accretions there on the north side, a subject of observation, and if so, state how the accretions formed. A. Well, I was in the habit of going to the lake shore frequently. At the time I observed an accumulation there, from time to time, of sand.

Q. In what year? A. Well, in '37, and, in fact, in the fall of '36, I observed it likewise, but not so much so.

Q. When you first observed it in '36, had there been any considerable accretion made? A. I don't think the accumulation had been as much from the time I first observed it, up to the spring of 1837, or rather in the winter of '37, as it was after that.

Q. The formation was more rapid after that than it was before? A. That depended a good deal on the season. Sometimes one blow would make it accumulate as much as in ordinary weather it would in six months. I used to observe that in very stormy blows, the accumulation would be more. My attention was drawn to it in '37 very particularly. I used to go in the lake very fre-

quently bathing of evenings, and going from bar to bar that was under water.

Q. How many of these bars were there? A. I think I used to go to about the second one. That was about as far as I could risk to wade to.

Q. State the position of the bars, and the process of formation? A. These bars seemed to accumulate under water, and run from the shore to the pier. That was about the way they used to form and quite a little ravine between them. They began in the water, and extended out in the water. I think they were the foundations of the accretion. The first accumulation commenced under water at the bars, by bars, and then it filled up between them. The accumulation likewise, used to arise from every blow. The sand on the surface would be blown up against the pier, falling in this place, and a great deal of sand would roll up against the pier that was dry. In fact it would drift like snow, and pile up considerably. At the same time, there were these little ridges and ravines under water where the sand was plain. I recollect one or two that were very extensive in 1836 and '37. That was quite a distance from what was called the lake shore then. I recollect one of these ridges—

Mr. Van Arman objected to any opinions.

Witness.—I made that remark in reference to the formation from observation.

Q. That was the fact, was it? Yes, sir.

Q. What was the fact? A. The accumulation of the bars under water, extending out in the lake, as I observed them, were continued out towards the end of the pier eastward. The formation seemed to be commencing under water, and likewise filling on the surface from every blow, from the blowing of the dry sand on the beach.

Q. State whether these bars, commencing under water, would rise up out of the water? A. Yes, sir, they would commence under water first, and then they would crop out. They would come up to the surface.

Q. Would there be any water between them and the shore? A. Yes.

Q. State how that space between the shore and this ridge coming out of water would be filled up? A. It would be filled up by the seas rolling over and rolling the sand in, and from the working in of the dry sand likewise. They would be filled up from the motion of the sand and the swells at the same time. There were apparently accumulations going on under water of ridges.

Q. Was there not more than one of the bars at the same time? A. I have discovered two, sir, at the same time. One would be nearer the surface than the other. It would be deeper down and

farther east. That would be about as far as I could observe it into the lake.

Q. Were there bars yet beyond? A. I don't know from any certain knowledge, except from seeing my companions swim to them and standing on what they said was the bar. I have seen them standing on them, and they had to swim to get to them.

Q. I understand you to say that the process of formation was much more rapid after you came here than it appeared to have been before—that you found the quantity much greater from year to year than the quantity you found when you came? A. I judge so, sir, from the appearance of what I observed at the time. I couldn't judge what it was previous to 1836.

Q. But you know how rapidly it formed after you came? A. Yes, sir, I think I know. I am pretty certain as regards that.

Q. [Presenting Allen's Map of 1837.] (Ex. C.)—State whether this map of Capt. Allen's corresponds with your recollection as to the direction and formation of the bars, and the accumulation, and how it corresponds.

Objected to by defendant's counsel, as leading the witness, inasmuch as he had never made the map, nor done any action described therein. Objection overruled. Defendant's counsel excepted.

Witness.—Well, sir, I think it corresponds with my recollection.

Q. With your recollection of the formation of the bar? A. Yes, sir, I think as I stated, and as I see here, these bars near the shore crop out near the surface of the water, and that, I think, was my idea before.

Q. That agrees with your knowledge? A. Yes, sir.

Q. What of those further out? A. Well, they are deeper under water. There is more water to the surface?

Q. What of the direction of the bars? A. Well, the direction of the bars was from the lake shore extending out to the point of the pier, extending easterly as they came towards the point of the pier.

Cross-examined by Mr. Van Arman.

Q. What's your occupation? A. I was merchandising at t[at] time, on the north side.

Q. How far from the lake? A. I was on block 1, near D[the]born Street.

Q. What has your employment been since? A. I have [ould] merchandising up to six years ago. [goes]

Q. What since then? A. Well, I was trafficking here in t[fore] in various ways. For the past two years I have been on a f[. I] or occupied with that.

Q. What was your occupation before 1836? A. Clerking.

Q. Where? A. At Syracuse, N. Y.

Q. What time did you come here in '36? A. I think it was about the middle of July, '36. I don't recollect the day precisely.

Q. You didn't go down to take any notice of this pier until late in the fall? A. Yes, sir, I went there in the summer of 1836.

Q. I understood you to say you didn't notice it till fall. A. I said I didn't notice so particularly.

Q. You didn't notice it all? A. Yes, sir, but not so particularly. I didn't visit it so frequently in 1836 as in 1837.

Q. How many times were you there in '36? A. Probably in the month of July, two or three times.

Q. Were you there after July in 1836? A. Yes, I landed there once as I came from Milwaukee. I think about the first of August, 1836. I came on a schooner from Milwaukee, and I left the schooner at the north pier, somewhere near the centre of it, I think.

Q. You went from there home? A. I went from there to the Tremont House.

Q. What sort of weather was it? A. Smooth, calm weather.

Q. What sort of weather was it the summer previous, when you were there? A. Smooth weather.

Q. What kind of weather in July? A. It was pleasant weather —colder. It was calm when we went there in the fall of '36. There used to be some blows when we got off the schooner. That was in August when we left the schooner.

Q. Were you there in the fall of '36? A. Yes, probably half a dozen or a dozen times.

Q. Were there any storms that fall? A. Yes.

Q. Did you ever notice the situation of the accretion there when there was a storm blowing in the fall of '36? A. I have not noticed it when the storm was blowing, but I have after the storm.

Q. What did you notice after the storm? A. You could notice nothing more than the usual appearance of the thing.

Q. Did it make any difference when there was a storm blowing
the fall of '36? A. I don't think it would make any difference
two or three days. I think the greatest accumulation was by
winter storms.

After these storms in the fall of '36 did you notice any ac-
ons? A. No, sir, nothing to observe particularly.

Did you notice it? A. I don't know whether my attention
alled to it?

Did you notice it? A. I at the same time would be there.

Will you please to answer my question, whether you noticed
accretions forming in the fall of '36? A. O, yes, I noticed
because they were accumulating constantly.

Q. Did the storms form accretions, or didn't they, in the fall of '36? A. Well, I think they probably would.

Q. Did they, or didn't they? A. I think they were naturally filling it up.

Q. Did they, or didn't they? A. I think they did.

Q. Don't you know? A. I know from visiting these points where the sand was making.

Q. Will you answer; did they, or didn't they? A. I think they did.

Q. Do you not know they did? A. I know they did in the fall of '36.

Q. You spoke of accretions being formed by waves which would raise the sand out of water, over the bar, touching the shore. Did you notice that in these storms? A. Yes, you would notice this during these storms—not in the storms, but after the storms. I didn't go down to notice them in the storms, because I think the storm would prevent any one going to notice them. I didn't notice them while the storm was going on. I noticed them after the storm.

Q. You say in '36, when there was a storm, you noticed an accretion afterwards? A. Yes.

Q. Did that bear a proportion to the length and violence of the storm? A Yes. After a very severe storm, and one that would continue any length of time, there was an appearance of an accretion more than there would be in not so severe a storm.

Q. Did the accretions bear a proportion to the length and violence of the storm? A. Yes, sir.

Q. That is, the longer and the more violent the storm, the greater the accretion? A. Yes; that I noticed in the fall of 1836.

Q. How much increase did you notice in the fall of '36? A. Well, I don't know as I noticed any in particular, as regards the distance of the accretions right on the shore. I don't know as I noticed the distance.

Q. Can you form any estimate, then, of the land or accretion that formed on the shore in the fall of '35? A. From July to along in the fall sometime of '36, I noticed there was an accumulation.

Q. How much? A. Well, say for instance on the bars; t[hat] would be the most correct idea for me to make an estimate of [the] bar under water—by the depth.

Q. I didn't ask for an estimate of the land under water, but [the] land above water on the shore? A. No, I don't think I c[an] give you any idea of that. It depends on whether a man [is] on it.

Q, Do you know anything about the rate of accretion be[low] 1836? A. No, sir.

Q. Go on to '37; how much was made there that year? A. [I] used to go down frequently in the summer of '37.

Q. Had there been any change in the pier from '36 to 37? A. Yes.

Q. What? A. Oh, they were at work on the pier extending and leveling up, I think. The work was going on.

Q. Did they extend the pier at all from '36 to '37? A. I think they did.

Q. Between July or August, '36 and '37? I think they did. They were at work on the north pier.

Q. Are you pretty positive that they were extending the north pier, from July, '36 to the end of '37? A. Yes, sir, I'm pretty positive. My attention was not called so much to the pier.

Q. It was attracted to the sand bar? A. No, sir, I went on the pier and saw the work going on. They might have gone 500 feet I think. I don't know how much they did extend it in '36, but in '37 they extended it some. They were extending it in both years.

Q. You can't state in which year they extended it most? A. No, sir.

Q. What did you observe in regard to the increase in '37? A. I observed it was extending out the same as the year before.

Q. Did you observe any difference between that and the former year? A. I think it was extending out, whether it was more rapid or not, I don't know. I think that in the winter of '36 and '37 it was extended out considerably.

WILLIAM H. STOW, called by the plaintiff, being duly sworn, was examined in chief by Mr. Arnold, and testified as follows:

Q. When did you come to Chicago? A. In 1835—the first time in July. I remained but a short time—only a few days—and returned to Syracuse. I came here again in October, 1835.

Q. When you were here in July, 1835, were you on either of the piers? A. No, sir.

Q. Were you in October, '35? A. I was on the pier in November, '35. I recollect their building it. I remember being on it.

Q. Do you remember when the work began on the lake shore, on the north pier, in 1835? A. No, sir, I can't tell the location.

Q. Do you remember in November, '35, in what manner you got up from the dry land on to the pier? A. There was a timber there. The pier was up some four or five feet, probably, from a lower pier or dock, and there was a long timber—some twenty or thirty feet—that reached out on the sand by the side of the other pier.

Q. Did that timber extend directly west, or northwest? A. Northwest, along near the side of the dock. It was a lower dock. It was a dock, I think, west of the pier. It was a low pier or dock like, that lay there, and this some three or four feet higher than the other.

Q. How long was that low piece of pier you spoke of, which extended from the main pier north? A. No, sir, it was one in the river running up and down beyond the end of the pier west. There was a short pier running north—a little low pier. The main pier ran east and west. This little pier ran north. There was a few timbers laid and filled with stone—not much of a pier —an L like, running out.

Q. How long was that? A. I don't know, it didn't show much. It showed in the main pier, I can't tell the length.

Q. What, if any thing covered it up on the north end? A. It was sand that covered it up on the north end. When it came up alongside of the main pier it was not covered with sand.

Q. What did that end rest on? A. I suppose it rested on sand and water.

Q. Was the water visible there at that place? A. Yes, it was when there was a storm.

Q. How far was that little L from the west end of the main pier? A. I shouldn't think it was at the end. I should think it was a little further east, may be ten feet, may be not so much. I don't know. It was the first crib, the first rise we went on to.

Q. You spoke of a timber lying on the main pier, extending across northwest to the land. How long was that timber? A. I should think 20 or 30 feet.

Q. What was the object of putting that timber there? A. I couldn't say. We went up on it, I know I did, from the sand to the pier.

Q. Was there any violent storm in the fall of '35? A. I know there was a storm from the seventh to the middle of November; a heavy storm.

Q. What were the effects of that storm upon the water at the west end of the pier? A. Well, I was there a number of times, and some of the time when a heavy storm struck it, and it passed through. The water washed over this low pier into the river.

Q. Did it pass through that first crib, or around the end? A. Around the end.

Q. When it washed through was there any land above water alongside of the pier to the east of that little L? A. Well, I couldn't tell.

Q. The weather was rough? A. No, it was calm. I never took notice of any. You see it was a beach there, and this wasn't a storm that threw it around, and it washed around and appeared to fall in the river. I know Mr. Sherman and others drew A. seine out on this point—they drew for fish. They hauled it over to this pier, opposite the river, where the sand either washed or fell in on the south side of the pier, so that the river was one forty or fifty feet wide, and the water went nearest the south pier leaving a kind of belly of sand down between the piers. I know

I took scows up there that year. It was a large body of water, and there was timber—large logs floating. That was right south of this first pier on the inside of the harbor, between the north and south piers.

Q. You speak of these storms washing the water through and over the L into the river. What was the width of the stream of water running from the lake into the river? A. I couldn't tell you. It dashed mostly against the piers, and they threw the water over. It blowed down from the northeast, and piled it up in there, but this was in a blow in the fall.

Q. Did you see them at any time down there, filling up where that L was, and repairing it? A. No, sir.

Q. You came in October. Do you remember of being on the north pier before the storm you speak of? A. No, sir, nor on it until after that storm—about the middle of November.

Q. From that place where the L was, east, was there any dry land? A. I have no recollection of seeing land east of that L at any time. In calm times, I have seen the land extending east.

Q. When? A. Oh, I don't know.

Q. Did you that fall? A. I think I did that fall.

Q. How far from that L was it? A. I could not say—it was a beach like.

Q. Where was the edge of the water? A. I couldn't say, but I know that the beach run below, and there was a beach twenty or thirty feet east, may be.

Q. State how many times you were there in November, '35, and what called you there? A. I had some iron and coal that came in in vessels, and I was there in scows getting it up the river. The iron was on board of vessels that lay out at the end of the pier, and couldn't get in, and I use to walk down the pier to get to my vessels. This was during November, '35.

Q. Do you remember whether you could get on the north pier, dry shod, from the land, without going on this timber? A. I think I could.

Q. At what point? A. At this point where this jog was in the pier. When there was no blow the timbers, I think, lay like steps, so that you could go up on it.

Q. They hadn't built the pier west of the old shore, at that time? A. No, sir, they didn't build it until sometime afterwards.

Q. Have you ever noticed that jog or angle since? I never noticed that angle. I know there was an angle somewhere on the pier, but never took notice at the time.

Q. That point was at the angle where the old lake shore was, where they put the first crib? A. I don't know. I know there was a bend in the pier. I think it was near the high pier where I spoke of going on with this timber.

Q. Do you know anything in regard to the south pier? A. I was on the south pier, on that island, frequently, in 1836. I was

not on it in 1835. There was a man named Hoyt, and one named Smith, occupied a building there for Henry Moore. I was over there a good many times.

Q. How did you get to the sand-bar? A. I generally walked across on the south pier. across the river. They had a boat that used to go back and forth across the river.

Q. How far from the old stockade was the west bank of the river? A. I should think fifty feet.

Q. How wide was the river? A. Two hundred feet, probably.

Q. How wide was the sand-bar? A. I should think three hundred feet certain.

Q. In what position was the south pier on the sand-bar, in reference to this jog or angle, did you notice the manner of constructing the north pier? A. No, sir, it was built when I came. I know there were piles in the river, I supposed driven in to keep it from going down the stream, when they sunk it there.

Q. After the construction of the pier was there still water in the bed of the river south of the south pier in 1835? A. Yes. I think a man of Mr. Hubbard's was drowned there, two years afterwards, in 1838.

Q. Where? A. I should think down where the Central Depot is now. I should think four hundred or five hundred feet from the south pier. There was a deep hole there, it was filled below, and it washed in and filled up naturally.

Q. You spoke of some houses on the sand-bar, how long did they remain? A. They went off, or tipped over in the fall of '36. I think it was in a blow, a heavy blow.

Q. Was there any vessel wrecked that you remember, in the fall of '35? A. I think there was a vessel that went ashore down below on the beach. I am not sure but there were two of them.

Q. Do you remember when the "Newburyport" was wrecked? A. It seems to me that it lay right in close by the south pier, I don't remember when. I think I saw her lying there on the south side of the south pier, close in.

Cross-examined by Mr. Van Arman.

Q. Were you ever sworn before in this case? A. I don't recollect.

Q. You can't remember? A. I don't. I don't believe I was. ıe was subpœnaed; but I have forgotten.

Q. Wasn't you sworn and asked, on your oath, to say wheth he you knew anything about the north shore in '35? A. I do she recollect. the

Q. And didn't you say you didn't know anything about it? Not to my knowledge. I don't recollect being sworn in the form ln't trial.

Q. Then this book [the printed Bill of Exceptions, with t in- report of evidence of the trial of 1853] must be very false in t 's.

account it gives of your testimony? A. I couldn't say. I know I was subpœnaed.

Q. Perhaps if I read it to you it will refresh your recollection: "I came here in 1835. The piers were built out several hundred feet at that time; in the fall of 1835 the river was three hundred feet from fort; one hundred and fifty across river; near two hundred feet across sand-bar; have been down near fort several times this season; the angle in the pier was near the river. * * I know nothing of north shore." Does that help you to recollect that you were sworn? A. It might; I don't recollect now.

[Witness takes the book and reads over the record of his testimony himself.]

Q. What is your recollection now? A. Well, my recollection is that as far as that says I was sworn, I don't recollect still.

Q. You have no recollection of being sworn at all? A. No, sir, not at all.

Q. Of course you can't say whether, on that occasion, you swore as I asked, or not? A. I can't, sir.

Q. Didn't you swear on the former trial, when inquired of about the condition of that north shore, that you didn't know anything about the north shore? A. I don't know. I don't say now that I know anything about the north shore. I might have said so then.

Q. You do say so now? A. Yes, sir; I don't know anything about the north shore, so far as the shore of the lake is concerned.

Q. Didn't you testify, just now, that you had some impression that it was thirty feet from some point where there was water, to the lake? A. No, sir. I said I thought it might be thirty feet from this angle to the water.

Q. Don't that relate to the north shore? A. Well, it might in one sense, and it might not in another. It might be fifty feet and it might not be ten. I state my impression.

Q. Was that meant to convey any definite idea? Do you mean it is ten or fifty feet? A. Yes, sir, it might be either one of them.

Q. Or more than either? A. Yes.

Q. In what sense do you mean that your statement, as to the stance of the water, was not in regard to the north shore? A. ar cause I didn't take particular notice of the water.

Q. Was your attention called to the subject at the time? A. do sir, it never has been until now.

Q. Do you still say you don't know anything about it? A. I Ki't more than a casual observation.

Q. Did you make a casual observation of that? A. I might in on ing along.

Q. Did you make any observation that you remember of the hig ance between that little pier and the shore? A. No. I don't wa ow as I did any.

Q. Neither casual or otherwise? A. No, sir, I only judge from the water passing through there in a blow.

Q. In 1835, in November, you was on this little pier built north of the main pier? A. No, sir, I was on the main pier.

Q. You didn't go on the little pier at all? A. No, sir.

Q. How did you get on the main pier? A. I went on a timber that laid off on the sand.

Q. Which side did you go on? A. West of it.

Q. You went on the main pier at a point west of the little pier on a timber that extended from the sand? A. Yes, sir, west of the elbow.

Q. I am talking of that L. You went on a timber that lay there to the main pier? A. Yes.

Q. What was under the timber? Was any water? A. Sometimes there was.

Q. Was there at that time? A. I went over it a great many times. Sometimes I went over above, and sometimes on the timber.

Q. Did you at any time see water under that timber between there and the pier? A. Yes, about twenty feet.

Q. You say there was about twenty feet of water there? A. Yes, may be thirty.

Q. How wide was the passage of water that you saw at the widest you saw it? A. It might be ten feet.

Q. You say that water came in over the shore, from the northeast. How far from the pier, north, was the point where the water came over the beach? A. It was right on the side of the pier where it run around.

Q. You say the water came from the northeast. How far north of the pier did it break over? A. It dashed against the pier and forced it over that way.

Q. Was there a pool of water that extended one hundred feet or more, north of the pier, inside of the shore, formed by the water beating over the beach? A. There was a low place over near the blacksmith shop.

Q. I speak of this pool of water that formed in that storm. Do you remember it? A. Not that I know of.

Q. Where did the water come in? A. It dashed against th[e] pier and threw it over and around.

Q. Over what? A. Over this L pier—this low pier, into t[he] river. It passed right over and around into the river, across [the] little low dock; and frequently the storm threw it right over [the] pier, so that it went all over and against the pier.

Q. How high was the main pier at that time? A. I could [not] say—may be six or seven feet.

Q. How long did you remain in Chicago? A. I have rema[in]ed here ever since.

Q. Were you down, the fall following, on the pier? A. Ye[s]

Q. How much did the land make during that next year? A. I should think it made considerable more—may be one hundred feet. I couldn't judge.

Q. Didn't it make twice that? A. It might. It would wash up, and, when it receded, would show quite a beach.

Q. Do you pretend to know anything at all about the accretion in '35, and '36? A. No, sir, no more than I know it increased a large amount in a number of years.

Q. During these two years didn't it increase a large amount? A. I don't know what it was in '35, so as to judge how much it increased in '36, and '37. I know it increased in '36, and '37.

Q. How much? A. Probably one hundred or two hundred feet in '36' and '37. That's as near as I can fix it.

Q. Did you have anything to call your attention to the progress of the accretion? A. There never was anything to call my attention to the accretion. I had to go to the harbor. I was doing work for Lieut. Allen.

Q, You say, in the fall of '35, the sand had blown in and formed a large mass? A. The water went in and filled up a large part of the bed of the river.

Q. Didn't you know that it had never been deepened out and that that was the original sand in the bed of the river? A. I supposed that the river had washed it wider than that.

Q. You supposed that that mass of sand was driven there by the lake? A. I judged that the wind and the water had driven a portion of it right over the pier.

Q. Was there any low pier there in 1835? A. There was a low dock or pier right west of the high pier, and the sand would drift there like snow.

Q. How long was that low pier? A. I should think it reached up to Kinzie & Hunter's warehouse. It was a pier that reached from the end of the pier up to Kinzie's warehouse. It is a number of hundred feet long. It may be it didn't reach all the way up.

Q. That was in '35? A. Yes,

Q. Had there been any low pier at all built in '35? A. I can't ·ay.

Q. At the time you were there in 1835, in the fall, was there ıy low pier up west at all? A. I can't say. There was a low ck or pier right west of this main pier.

Q, You can tell the distance? A. No, sir.

Q. Was it a hundred feet? A. I can't say, It may be so to ınzie's warehouse and may be not. They generally went down the sand north of this.

Q. How far did this sand-bank extend east of this jog—the h point? A. I couldn't say, not a great ways east above ter.

Q. How far? A. It might be thirty or forty feet.

Q. Was it not one hundred feet? A. I should think not.

Q. Are you positive? A. I should think not one hundred feet.

Q. You suppose that that sand was driven over the pier? A. I supposed a good deal of it had, from the way it looked there.

Q. Was it not four or five high? A. It might have been some part of it, but there it was not. The pier was low further inland.

Q. Are you sure there was any pier inland? A. I could not be certain. I think there was timber there.

Q. This small pier that made the L with the big one, was north of the main pier? A. Yes, it abutted up against it.

Q. That low pier didn't extend west to the end of the high pier? A. I didn't say so. I think it didn't. I can't be positive.

Q. Your recollection is very vague and uncertain about these localities? A. A great part of it is, but not about going on the piers; that I recollect.

Direct examination resumed by Mr. Arnold.

Q. You spoke of this piece of land where they drew these nets, south of this high pier; did I understand you to say it extended thirty or forty feet east of the jog in the pier? A. It might.

Q. What is your best recollection? A. I think it was thirty or forty feet—may be more. I think it was washed in there and blew in there, the main part of it, from the north side. As you walked along the pier it was alongside of you south. We used to go down on it and draw the seines there. I was there a hundred times when I went fishing.

Q. How far did it extend on the south side where they drew the seine? A. I should think thirty or forty feet.

Mr. Van Arman—You said before how far you thought? A. I said one hundred feet, but that is only my recollection—that's all.

J. D. Webster, called by the plaintiff, being duly sworn, was examined in chief by Mr. Wills, and testified as follow:

Q. Captain Webster, were you formerly attached to the army? A. Yes, sir, I was for sixteen years.

Q. Did you hold the position of Superintendent of Harbor here, the same that Capt. Allen did once? A. Yes, sir, I di for awhile.

Q. State whether it was any part of your duty, as Superint dent of the Harbor, to report to the Government the changes t were occurring in and about the harbor.

Objected to, and argued by counsel on both sides. The Cc stated that the report of Capt. Allen of his soundings, meas ments, &c., with the accompanying maps, had been admitted a diagram, as illustrating the evidence of the witnesses, and no binding or controlling upon the parties, and no act of the offi in charge, whatever his duties might be, could bind them. T objection was sustained; plaintiff's counsel excepted.

THE COURT.—When did you come here? A. I believe I was here in '41 or '42.

Q. When first were you connected with the harbor? A. I was connected with the harbor in this way: I was assistant to the General Superintendent of these works. I believe I was never (to correct my former testimony) in precisely the position of Capt. Allen. I was General Superintendent of all the works on this lake. I believe I never did hold the place of local superintendent here, but I was superintendent of various matters about the harbor here.

Q. State from your knowledge of the western shore of Lake Michigan, whether there are any bars along the shore? A. I know that the sand-bar which we have always denominated "the bar," which extends outside of the pier, goes around there. I don't know the existence of any other bars that I recollect, except that outer bar, under water. I think since my acquaintance with it, it has receded, and the soundings have been pretty even. I have never known myself of the formation of any bar except the outside bar, and what we call "the bar," has always been not any great inequality, but we used to call everything a bar which was less than nine feet water; and we drew a curve there, and called it "the bar," which was higher inside and deeper. It might have receded with perfect evenness, but we put it down "bar," calling the nine feet curve the outline of the bar. It was a curve resulting from soundings.

Q. What was the direction of the outer bar? A. It was nearly north and south from the pier. Any extension of the pier is in fact pushing the bar out. It constantly tends to reform. If the north pier was run over the existing bar, the same formation would begin at the end outside. Most persons here are familiar with that fact. They begin to form under water. The tendency of the pier is to form a bar under water.

Objected to, as the witness was not yet shown to be an expert.

Q. Then, Captain, I have to ask the question—are you a scientific man? A. Moderately so, sir. I have some little knowledge, sir, that might be termed scientific. I suppose all knowledge is scientific, that is properly digested and classified.

THE COURT.—How can you by observation and experience become familiar with the operation and effect of the action of water upon the formation of new land where piers have been constructed as this north pier was constructed in this harbor? A. I have, sir.

Q. For a series of years? A, Yes.

Q You consider yourself familiar with the subject? A. Yes, sir, I am familiar with the subject. I know there is a great deal to be known about it, and I don't presume to know it all.

Q. I understand you to say the effect of extending the pier into the lake is to cause the formation of a bar at the point of the pier? A. Yes, sir, the bar always connects itself with the shore. The

general direction is about parallel to the shore. That is the way I think it tends to form outside, north and south here.

Q. What is the effect of lapse of a time on the increase of these bars under water? A. They tend continually to increase up to a certain point, depending on a great many circumstances. The shape and direction of the pier and the storms have a great deal to do with it.

Q. Suppose the pier to be run out seven hundred feet in one season, what would be the effect of that upon, general principles. A. The bar would begin to form off from the end of the pier under the water. After the drift would first accumulate in the angle, it would then tend to form under water. I think that is the universal experience.

Q. The bar would form at the end of that pier? A. Yes.

Q. Suppose it to be run out five hundred feet further? A. That would postpone the formation of the bar at the end, but ultimately there would be another one formed at the end. The time would depend on the course, and violence and direction of the storms, and also upon the form and direction of the piers. There has been a change in reference to this pier. It has accumulated much more slow since the curve was made, because there is less check to the current.

Q. State whether the effect of storms upon a shore is uniformly to make deposits or not? A. That depends upon its situation. It is uniformly to wear it away in some situations. North of this pier, I think, as a general rule, it is to make deposits.

Q. Are there any exceptions to that rule? A. There may be. I think there are some exceptions, but it is the prevalent one.

Q. [Presenting Graham's map, G. 52.]—Look at that map of Col. Graham's and see whether the variations of that line will refresh your memory, enabling you to state as to whether the action of storms is to uniformly increase or not? A. It is, as a general rule, up to a certain point, I think. I would state here that these other lines have gone so far out that the accumulation has been very slow, if any, because it is filled up under water here north, as you see by these soundings, so that the greater part of the sand slides away, and is deposited down here below, because it is the same kind of sand that comes down past the pier that stops here, and makes this accumulation. Suppose this should get clear out to the end it would all pass by. As you approach that the ratio of accumulation decreases. I know a violent storm sometimes drives the sand in, from my own local experience at Milwaukee, when the curve struck the shore in that direction. After a violent storm it would be seen closing up, because there is an accumulation of water on the shore, and it would fill it up on the shore here. It would take it up out there and throw it in here, [illustrating by the map.]

Q. Might it not occur that this year there would be an accu-

mulation of sand, and next year it would wash away, and the shore become less and less? A. I should think not by the washing itself, scarcely ever, but by the rise of the lake it might; and I think, perhaps some of these slight differences are caused by that fact. I think, as a general rule, it would accumulate.

Q. Would a difference in the direction and violence of the storm have any effect? A. Yes, a very violent storm from the east, might abrade the shore, when one from the northeast would increase it. The direction of the wind as related to the line of the pier has something to do with it. If then the storms were from the east the tendency would be to abrade, but from the northeast, I think the tendency in that particular position, would be to increase it. A strong eastern storm, I think, might abrade a little. I don't think it would accumulate any in an eastern storm, but I think it would in a northeastern, the pier being as it is.

Cross-examined by Mr. Van. Arman.

Q. You have observed pretty carefully the causes in operation here to produce changes in the harbor? Q. Yes, sir, I have given them some attention and thought.

Q. And have compared them with phenomena elsewhere? A. Yes, particularly with Milwaukee. I had charge there.

Q. You have no doubt about the mode in which bars are produced? A. No, sir, not about the general mode.

Q. The laws you depend upon to account for the accumulation of sand are laws that are general and universal under similar circumstances? A. So far as I know, sir, they are.

Q. You know of no exception to the general laws? A. No, sir, no exception.

Q. They are laws of nature? A. I suppose so.

Q. You say if you build out a pier on a coast like this, two effects are produced; one is to form a bar outside, and another, to form an accretion of the earth on the shore? A. There are scarcely two effects, but it is all the same effect. What doesn't lodge against the pier follows around. It is the same cause.

Q. The fact is a current of sand passes along this shore to the south? A. Yes, sir, during storms when the water is charged by dashing it off the coast north, the sand is borne along.

Q. The bar outside and the accumulation inside is caused by stopping this sand? A. Yes, sir, it is formed by the pier. Formerly there was more there. The bar outside and the accumulation there is produced by the check of the pier, which causes the sand to drop down.

Q. In a bar like that in Chicago harbor, if you build out five hundred feet this season, supposing the same cause in the same degree, would the accumulation of sand be greater immediately after the pier was constructed, or at some subsequent period? A. Well, the violence of the storms, and all that being equal, I should think it would be greater and more rapid directly after the con-

struction of the pier than it would at a later period, because as you go out, as I explained, a greater portion slides away.

Q. Did you ever know an instance in which the effect was suspended for a year or two years, and then suddenly commenced? A. No, sir, I don't recollect any instance.

Q. Would you expect to see, in the common order of things, a phenomenon of that kind—a pier built out and no accumulation worth mentioning for two or three years, and then all of a sudden commence? A. I don't know what would be worth mentioning. I should expect to see a good deal of accumulation.

Q. For what period of time have you observed the action of these waters? A. I first came here and noticed something about it with more or less accuracy—as I was assistant to the office in charge—in the summer of '41 or '42. Shortly after that I was connected with the Lake Coast Survey. I believe in '44 I had the local charge of the harbor at Milwaukee. After that I was on the Coast Survey, again. I returned here from the south—from Mexico—in '48, and from that time have been connected with these works, as the immediate or general superintendent, up to the time of my resignation, nearly six years ago.

Q. Speaking of the period with which you have been acquainted with the accumulation, has it been more or less rapid at the earlier or later periods of your observation? A. I think it has been very slow for the few years last past. My impressions previous to that would be derived from the records of the office.

Direct examination resumed by Mr. Wills.

Q. Your idea is that in proportion as the accretion extends east, the piers being shortened, in the same proportion the amount of accumulation diminishes? A. That's the idea.

Q. That in proportion as the accumulation goes out, the pier is shortened, and the amount of increase diminished? A. Yes. The amount here has decreased, apparently; but the amount of increase by the same causes has increased. What we call "The Bar" has increased, because the sand does not come in here, but goes out there.

Mr. Arnold.—Suppose the pier to be only up to the top of the water, or a foot above, would it increase as rapidly as though it were four or five feet high. A. Scarcely. There would be a little thrown over. It would be checked on the other side.

Mr. Van Arman.—Would it make much difference? A. Not a large per centage. I think the amount going over a twenty-four foot pier would not be much. I think what went over this pier was blown over.

THE COURT—Is your experience sufficient to enable you to state what extent of water there would be, for instance—on the north side of the pier—that is to say, how far the accretion would go toward the terminus of the pier? A. Well, I think it would depend a good deal on the angle at which it is left off. I think if

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left in this northeast direction which it had, it would form very close to the end where it is now.

Q. If that end rounded, it would have to accumulate outside on the bar, very nearly up to the water, before there would be any very perceptible accretion on the shore, where it joins on the north side. A. No, I don't think it would even come up out of the water, but it would be impracticable for vessels as it is now—that is, less than ten feet water there.

Mr. Van Arman—Then the question as to how near the water would come to the end of the pier, would depend on the form of the pier? A. Yes, sir; as it is now left with that tendency to the south, it would not accumulate so rapidly.

Q. How near out to the end is the accretion formed now? A. I don't know. The maps show. Perhaps two or three hundred feet.

Q. A portion of that pier has been put on lately? A. No, sir. There is no extension to the pier since I put the pier head to it, the light-house pier, as it is called. The foundation is inside of that, and that has not been extended in length since I left it.

Mr. Arnold stated that he wished to be considered as offering in evidence the maps before alluded to, as documentary evidence.

The COURT—All that have been referred to by the witnesses can come in as explanatory of the statements of the witnesses, so far as they are confirmed by the witnesses.

Judge Higgins—I suppose it is not necessary for us to repeat our objection, we except to all these.

GEORGE W. SNOW, re-called by the plaintiff, was further examined by Mr. Wills, as follows:

Q. [Presenting original map.] Look at that map and state how far you surveyed the river.

Judge Higgins desired that he should not look at the map if he could remember without.

Witness—I can't remember. I can't say definitely; as nearly to the other end as I think I told you—about 200 I supposed to be the end of the survey not finished, but I suppose—

Objected to.

Witness—I don't remember anything only what is before me; I get it from this.

Q. Did you survey the whole river as it appears laid on that map? A. I did not.

Q. How far east did you carry your survey of the river on the north shore? A. Well, sir, I have to draw conclusions.

Mr. Lincoln—You did meander this shore of the river in part? A. Yes, sir.

Q. Where did you begin? A. At this point [showing the map]. I meandered it along there.

Q. Where did you go to? Can you tell by that map where you stopped? A. No, sir, not positively.

Q. State your best recollection of what you know from that map. A. I should say then that it would be about lot 25. I hardly think to lot 26. I think to the east line of lot 25.

Q. From Water street two hundred and fifty feet south? A. Yes, I see a pencil mark here which I presume is a memorandum at the time, which would take me back to the west side of 25.

Judge Higgins—Did you make that pencil mark? A. I don't know.

Judge Higgins—Do you know where it was made? A. No, sir, I rather think I made it myself.

Q. Why? A. Because it is something like the direction of the harbor—where the supposed southern harbor would be.

Q. East of lot 25 the river is laid down by you without any survey? A. Yes, without any survey.

Cross-examined by Judge Higgins.

Q. You have no recollection except a general impression that the harbor was to be two hundred and twenty or two hundred and fifty feet south of the south line of Water street? A. Yes.

Q. You supposed the harbor would run about the direction you run Water street? A. Yes, I have a distinct recollection of basing all this upon a supposed harbor.

Q. Did you survey the river shore at all? A. Yes, sir.

Q. You think you surveyed it with reference to a harbor or pier that was to be built? A. I know that was it.

Q. You think it was 200 to 250 feet distant from Water street? A. I thought so.

Q. Were any stakes stuck at the time for the harbor? A. No, sir, it was not surveyed.

Q. Where were you when you drew that map, Mr. Snow? A. In my own office.

Q. Here in the city? A. Yes. I don't know that I had an office. It was at my house.

Q. Why was it made so small? A. It was made out of a piece of dry-goods box. We had no other paper here that would answer.

Q. That was the first map you ever made? A. Yes.

Mr. Arnold announced that the plaintiff's evidence was all in, except the testimony of Mr. Gurdon S. Hubbard, who was not present. It was agreed by the counsel on both sides that the witness, Hubbard, should be subsequently called and fully examined by the plaintiff, and with this understanding the plaintiff rested.

Court took a recess of twenty minutes.

DEFENDANTS' EVIDENCE.

Mr. Fuller, for the plaintiff, offered in evidence a DEED from Robert A. Kinzie to John H. Kinzie, dated February 25, 1833, conveying the following described lots or parcels of land, situate, lying and being in Cook County, Illinois, and in Kinzie's Addition to the town of Chicago, and known and designated on the plan of the said addition to the said town of Chicago as follows, viz.: "Lot number two in block number one," [and describing various other property,] "and water lots number two, twelve, fifteen, sixteen, twenty-one, twenty five, thirty, *thirty-four and thirty-five*," &c., "all of which may be seen by reference to the plan of the said addition to the said town of Chicago, now on file in the Recorder's office of Cook county, Illinois," &c.

Mr. Fuller also offered in evidence a DEED from John H. Kinzie and his wife, Juliette A. Kinzie, to William Jones, dated September, 1st, 1834, conveying "a lot of land lying and situate in 'Kinzie's Addition to Chicago,' in the County of Cook and State of Illinois, described as follows, viz.: being water lot numbered thirty-five, and all my right and title east thereof, agreeably to the town plot, recorded in the office of the Recorder of the said County of Cook, to which reference may be had, if necessary," &c.

JOHN T. WAITE, called by the defendants, being duly sworn was examined in chief by Mr. Fuller and testified as follows:

Q. Are you employed in the Recorder's office in this county? A. I am.

Q. Are you acquainted with the books of record in that office? A. Yes, sir.

Q. [Presenting Record Book A.] Is this one of the books of record? A. It is.

Q. Turn to pages 311 and 312, and see what it contains? A. It is a plat of "Kinzie's Addition" to the city of Chicago.

Mr. Arnold—Is there upon the records another copy of this map? A. I think there is. That purports to have been made in 1847.

COURT—I suppose it is conceded that there was another copy taken.

Judge Higgins—We will admit that the plaintiff got it recorded, as it appears, in 1847.

Mr. Fuller offered in evidence the recorded plat, in connection with the deeds, previously offered, filed for record February 22d, 1833, and recorded January 15th, 1834, without objection.

ALANSON SWEET, called by the defendants, being duly sworn, testified as follows:

Mr. Arnold—I desire to ask a few preliminary questions. Are

you interested in the land which is in controversy here? A. Not the least.

Q. Have you ever been? A. Not since it was transferred from Mr. McGregor to Mr. Jones; or rather I had an interest in the transactions or claims of Mr. McGregor, but we couldn't obtain the kind of title we wanted of Mr. Kinzie, and I told Mr. McGregor to dispose of it.

Q. Have you ever had any interest in that land, directly or indirectly, since? A. Never, sir.

Q. You have been here to testify upon every trial? A. Twice, I believe, before this.

Q. Has any consideration or inducement been offered to you to come here and testify in such a way that the suit should be gained by the defendant? A. Never, not the least.

Q. Have you received compensation over or above your witness fees? A. My impression is they paid me about $30 the last time.

Q. Over and above your witness fees? A. No, sir. I think Mr. Jones paid me what he considered consideration for day labor.

Q. You have no interest direct or indirect in the result? A. Not the least.

Mr. Fuller proceeded with the examination in chief.

Q. When did you come to Chicago? A. In July, 1831.

Q. Where from? A. From Columbus, Ohio.

Q. How long did you remain? A. I remained but a short time —three or four weeks. I came again in the March following— that is in 1832. I remained here from that time until late in October, or the first of November, 1835.

Q. Were you here in February, 1833? A. I was.

Q. Did you know the premises described as "Kinzie's Addition to Chicago," at that time? A. I believe I did.

Q. Did you know Robert A. and John H. Kinzie? A. I knew Robert.

Q. Did you know George W. Snow? A. I did. You asked me if I knew Robert and John Kinzie. I don't wish to be understood that I didn't know John. John came here some time after I did. I had no acquaintance with him before I saw him then, and then only a few days.

Q. Did you know of a survey being made of the property called "Kinzie's Addition to Chicago?" A. I did.

Q. Did you see the persons at work at it? A. I couldn't say who the parties were except Mr. Snow.

Q. Do you know water lots 34 and 35, in Kinzie's Addition, respectively claimed by these parties? A. Yes, I do.

Q Was your attention called to these water lots in respect to the lake shore? A. It was.

Q. Were you on the ground at the time these lots were staked off? A. Yes, when 34 and 35 were, I was.

Q. How were they marked on the ground? A. There were

stakes set along the whole line of that tier of water lots approaching the lake on North Water street.

Q. Did anything call your particular attention to lot 35, and its situation? A. Well, I had a curiousity to know where the beach of the lake was, and if I could properly and conveniently, or by some exertion even, to buy the outside lot—the lot that would control this accretion as it is called.

Q. Who were present on the ground at the time, and what was done? A. Mr. Snow was present; I don't know but Mr. Kinzie. I think it is very likely he was. They measured down that line of the street, marking off and setting little pins at each corner of each lot. I kept track of them, watching along to see where the last lot would be, or the point where by extending the line of the lot south, it would intersect what I supposed would be the harbor, and cut off the land east of it, with a view to obtain, if possible, that portion of land. When they came to this corner between 34 and 35, it was coming very close. The compass was set, I think, by Mr. Snow, and as they measured off, they measured through to the water. While the compass was standing there, I looked through, with a view to see where the shore would cut the west line of 35. I fixed on something—some object, I could not tell what it was, but an object some six hundred or eight hundred feet off. When they had got through and gone away, I went back to that point, and stepped it off until I was satisfied I had gone far enough south to intersect what would be the harbor—the channel where it was cut through. I was satisfied with the investigation I had made, and went away. Shall I go on?

Q. State how far it was? A. Well, I went down perhaps five hundred or six hundred feet, I should think, from stepping, and was satisfied from looking up the river and down. There was at that time a large stake standing about the middle of the sand-bar, that I had been told was where the channel was to come. Whether that was so or not, I didn't know; but the stake was there, and it was very near where I thought the channel would come, looking at it in a practical view. I went through until I passed that stake, and turned around and left it. I then in the course of a little time told Mr. McGregor——

Q. Tell what you did? A. Shall I tell about procuring the buying of it through Mr. McGregor?

Q. No, I don't care about that.

Mr. Lincoln.—Was that line at a right angle to North Water street? A. Yes, sir, that's what it was—at right angles to North Water street.

Q. How far south did you pace? A. I should think some two hundred steps—some five hundred or six hundred feet.

Q. Did you strike the water in going that distance? A. There was no water there. As I approached south there was a little ice and sand—a mixture of sand and ice as it drifts on to the shore

in winter. When I came to that point about six hundred feet there was sand and ice rather along there. I had no means of telling where the water was, if there had been no ice; but I was satisfied I was on the land when I stopped.

Q. Had you reached the ordinary water line? A. I should think I had not, but I might have been close to it.

Q. What was it that made you particularly interested to find out where the eastern line of 35 would fall? A. I had seen the operation of extending these piers out at different places on Lake Erie, and questions of this same kind had originated or come up. One in particular was at Grand River, Ohio; and I thought the same question would come up here, and probably it would be a little speculation to get that lot, not thinking it would ever come to where it is now. My object was to buy that outer lot and have the speculation that might grow out of it after the pier was built.

Q. Did you acquire any interest in the outer lot 35? A. I suppose I can say yes, I did. If it is proper I can go on and tell how I did it.

Mr. Arnold—Was the contract in writing? A. It was in writing.

Q. What has become of it? A. I can hardly tell. Mr. McGregor had it the last I knew of it.

Q. Did you remain here during '35? A. I remained here until the last of October or first of November, 1835.

Q. When was work began on the north pier? A. It was in the latter part of 1834, I should think.

Q. Did you do any work upon that pier? A. I did not.

Q. What was your business about there during the summer and fall? A. I was building in the city in connection with McGregor. I was getting out timber and rafting, and getting out logs. We were doing considerable business in the way of lumber.

Q. Were you often on the pier and working there? A. I hardly ever went out on the pier when they were putting it in. If I had business it was merely passing through the channel through the bar.

Q. When did the river pass through the bar? A. I cannot fix the time. It was the latter part of winter. I have heard it named here as February, and I have no doubt that it is correct, in 1834. I know it was the same winter following the putting in of the south pier.

Q. How wide a channel or breach did the river make through the bar north of the south pier? A. It would be a matter of estimate—probably 80 to 130 feet. I speak of the surface now—80 or 130 feet of water.

Q. Did you have occasion to notice how deep it was? A. No, sir, I did not.

Q. What was the effect of the opening of that channel upon the lake shore next north of the river upon the shoulder of land there? A. I could only speak from a general idea of the operation of the water. I never took any measurements.

Q. Describe it? A. I have on my mind about how the bank looked—the general appearance of it. As the river went out through the bar, it went out in very high water with a southwest wind, and it went out rapidly. The current would wing off to the north, and it washed off the left hand corner of the bank facing it, so that the left hand was considerably dug off, and bent around as it went into the lake, forming a sort of half circle.

Q. How much did it carry off that corner down to the time of the construction of that pier? A. It took off the point there, and rounded it off to the north where the north pier would be beyond that. It probably affected it, measuring from the south pier three hundred or four hundred feet. It would be a matter of opinion.

Q. Going down the north shore, tell whether looking south, the line of the shore around the corner was curved westward in the spring or summer of '34? A. It was.

Q. Was it a little or a very considerable amount. A. I should think from the action of the water it had cut that corner perhaps—

Objected to as opinion.

Q. Tell what you saw. A. I don't know of anything that took away the sand except the action of the water. I speak from the impression on my mind. If you draw a line at right angles to the outer edge of the bar northerly—

Objected to as opinion.

COURT—State your recollection. A. I have no doubt then—

Objected to.

Q. State the fact. A. I didn't measure it, and I can't, without some privilege of telling how the thing looked, make even the attorneys perhaps know what I mean. The course that was made by the channel going out was taken off and rounded perhaps on a curve line, into the shore, one hundred or one hundred and thirty feet. It rounded out north to probably a line of three hundred feet or more, around, like this table corner, here [illustrating]. There, for instance, is the lake, and then here was a hundred feet or more washed off. It was half way across there, and then south of that the channel went out. That was done when the river passed out. As the current came out there was a heavy southeast wind, and it blew the water out to the north, so that it took off that corner.

Q. Were you present when they commenced working on the north pier, or the first cribs? A. No, sir, I have a faint recollection that I was present and how the cribs looked.

Q. Did anything call your attention to the making of the land north of the north pier? A. Nothing particularly.

Q. When did you first observe it? A. I can't tell the particular date. I only observed its making as a somewhat natural thing in my mind, for I expected it would make. I often cast my eye on it when I was about.

Q. When did you leave? A. In the last of October or the first of November, 1835.

Q. Had you been often on the pier, and were you on these premises that Autumn? A. No, sir, I can't say I was often on that pier. I seldom went on the pier further than the shore. I had nothing to do there, and I seldom went on there. I couldn't speak of any time going out on the pier. I was on the shore frequently north of that, as I had busines more or less.

Q. The land did begin to make after the construction of the pier? A. Yes, sir, it did begin to make.

Q. How soon after the construction of the pier did you observe it begin to make? A. couldn't say how soon. I observed it that fall

Q. Did you notice it during the summer and fall of '35? A. I can't speak of any dates that summer, except when I shipped my property to go up north, and that was probably the last of October or first of November. At that time the angle that was made was pretty well filled. The pocket that was made by extending the pier out there on the north side, was pretty well filled up. I can't speak from measurement.

Q. How near the end of the pier was it that fall? A. I don't now fix the end of the pier. I can only fix about the distance from where the shore was. That probably might have gone out one hundred and fifty or two hundred feet. My better judgment would say it was over two hundred feet, but I don't want to go over what it was. Say over two hundred feet in the fall of '35, at the time I shipped my goods and went away.

COURT.—Do you mean from the shore of 1833, or where it was after this excavation? A. I should say from 1833—I should think it was about one hundred and fifty or two hundred feet from the original lake shore, as it was in 1833.

Q. Did you know Mr. Jones in 1835? A. I did.

Q. You are acquainted with him? A. Yes.

Q. Did you know him at that time as the owner of this lot 35? A. I never saw any papers, but I had that kind of an understanding that we got from talking about it that he was the owner.

Q. Where was the accretion in the fall of 1835 in respect to the west line of lot 35? A. The west line of 35 was very nearly, probably within ten or fifteen feet of the original shore. The water had filled up, and it had gone out beyond there.

Q. It had gone beyond the west line of 35? A. Yes, sir,

it must have gone one hundred and fifty or one hundred and eighty feet beyond the west line of 55 produced down to the pier.

Q. Were you here in '36 and '37? A. I was very often here for ten years.

Q. Where have you resided since? A. In Milwaukee.

Q. Did you know Aleck McGregor? A. I did.

Q. Is he alive? A. I presume not. I got a letter more than a year ago, I think, from his brother-in-law, who has charge of his affairs—

Objected to.

Q. You have been advised that he's dead? A. I suppose he is. I have heard so. I am satisfied that he is.

Cross-examined by Mr. Arnold.

Q. You say you were on the ground of Kinzie's Addition at the time they were surveying it, with a view of making a speculation there? A. I was at the time they surveyed that portion. I was not with them all the time.

Q. You didn't advise the owner what your object was? A. No, sir, nor anybody.

Q. You was looking to get a chance to make a speculation? A. Well, sir, I had emigrated West like many other people and wanted—

Q. Did anybody see you look through that compass? A. I didn't mean anybody to see me.

Q. Didn't you do it in a way designed that they should not see you? A. I didn't want them to mistrust my object, but as to whether they saw me or not I can't tell.

Q. Didn't you say on the other trial, it was "by stealth?" A. No, sir, I never used that word.

Q. It is put down here? A. I didn't use it. I didn't know what it meant a year or two ago. I have found out since that.

Q. Do you know what "clandestine" means? A. Yes.

Q Did you look through that clandestinely? A. I looked through it. It was a public act. I meant to get that line.

Q. Did you mean anybody to see you when you did it? A. I can't say. I know I meant to get that line.

Q. Did you mean that that act should be observed? A. I should rather that those men wouldn't have seen it, and wouldn't know what I was doing.

Q. You did it in such a way they wouldn't probably see you? A. That's more than I can tell.

Q. Did anybody see you? A. I can't tell.

Q. Did you do it in the presence of anybody? A. I can't tell you. I will answer your questions as well as I can. I did it with a view to not let them know what I was doing.

Q. Then you did it pretty quick? A. I presume so—reasonably quick.

Q. You stepped up in a sly way, took a look, and went away?

A. No, sir; I said I didn't mean them to see me, and to do that I wouldn't have been sly; because if I was going to do such a thing, I wouldn't do it in a sly way; because a bold way would be less likely to be mistrusted. I didn't mean them to mistrust.

Q. You did it pretty quick? A. No, sir, I didn't say so. I did it until I was satisfied.

Q. Didn't you say you did it pretty quick? A. I said reasonably quick.

Q. Who set the compass. A. I think Mr. Snow did.

Q. Did you change its position? A. It's my impression that I did wheel it around at right angles.

Q. Are you sure? A. I have that impression.

Q. Are you sure? A. I think I did.

Q. Are you sure? A. That's as sure as I can be? I either found it as it was set south, or turned it that way.

Q. Did you turn it, or not? A. That I can't presume to tell you; but my impression is I turned it round.

Q. You saw some object, you don't remember what, seven hundred or eight hundred feet off? A. Some distance off. I didn't state the distance. It was may be two hundred yards I probably paced off. It was down, or rather up the lake, looking southerly. That object was probably eight hundred, or one thousand, or fifteen hundred feet off; somewhere there.

Q. What was the object? A. I couldn't tell you that. It might have been a hole, as there often is on the lake shore in winter, or sand, or a block of wood—something dark.

Q. Do you remember whether from that street the line diverged from a north and south line towards the west? A. No, I don't know where the north and south line would come.

Q. Did you observe whether it diverged to the west? A. No, I didn't pay any attention to that.

Q. You don't know whether it did or not? A. Not from that glance through the compass.

Q. Do you know whether it did or not? A. I don't know from any survey.

Q. Do you know from personal observation? A. No, I don't know from personal observation, because I never surveyed it.

Q. What direction did you pace off that six hundred feet? A. On the line the compass gave me.

Q. Was it north and south? A. No, the line bore east of south.

Q. You paced off six hundred feet east of south? A. Yes, five hundred or six hundred feet on a line at right angles with North Water street.

Q. How much east of south? A. I can't tell you.

Q. At about what angle do you think you paced off this six hundred feet? A. That would be to tell about the angle Water

street runs. I went at right angles to Water street; that would be east of south.

Q. How much? A. I can't tell you. In the same degree that North Water street runs north of east, probably. It would be a matter of guess, If you want that I will guess at it.

Q. Do you know? A. I would only guess at it.

Q. Do you know? A. If you want me to guess, I can do so. I don't know. I never surveyed it.

Q. Will you state that it didn't diverge fifteen degrees to the east at that time? A. I don't think it did, or rather I think it did not.

Q. Are you positive? A. As positive as of anything I looked at when I didn't know the facts.

Q. You are positive that your opinion is it did not? A. That's it.

Q. That it didn't diverge fifteen degrees east of a south line? A. It might possibly, but I should doubt it very much.

Q. There was considerable ice on the lake shore that day, wasn't there? A. Yes.

Q. How much? A. Well, we had a spell of cold weather, but—

Q. How much was it? A. I didn't measure it. You must let me guess at it. I saw ice—

Q. Was it one, two, or three feet thick? A. I think I saw all these.

Q. Did you see ice three feet thick? A. No, sir.

Q. Didn't you say so? A. No, sir, I'll tell you what I said: one foot, two feet, or three feet. All that I might have said; but not ice three feet thick. I'll tell you what I mean. In the winter, as the cold weather comes on and the sea makes ice, the ice will fly over the shore and make out on the shore, and be in hummocks in some places only six inches and in other places two or three feet high.

Q. Yes. I have seen it ten or twelve feet high. A. So have I.

Q. About how high was the ice that day? I can only guess.

Q. Guess. A. It might have been six inches or possibly nothing, up to three or four feet may be; some places eight feet, but I should think but few places where it was eight feet.

Q. How broad was the piece? A. Not very broad.

Q. How broad? A. May be one hundred feet.

Q. Did you go down to see what part of that hundred feet was on the water and what on land? A. There was no ice where I paced that day; all the ice that was eight feet high, if there was any, was south.

Q. Did you go to that place? A. No, sir, not when it was eight feet high.

Q. Then how do you know? A. I told you I was going to guess at it when you asked me. I didn't measure it.

Q. You don't know how much was in the water and how much was on the shore? A. No, sir, I didn't measure it.

Q. Was there any ice that day east of North Water street? A. I wouldn't say right east at the end of Water street. I wouldn't say how it was, but further down the ice intermingled with the sand all along that lake shore. If you asked me whether there was some, I would tell you there was some, but I don't know how much in quantity. It was so all along the coast. I didn't measure it.

Q. Opposite 34 was there ice on the lake shore? A. I should think there was.

Q. How much? A. I don't know; I didn't measure it.

Q. At that time did you know the numbers of those lots? A. I should think not.

Q. They hadn't been numbered? A. I guess not. They might have been. I don't recollect working from the numbers.

Q. Was Mr. Kinzie present at the time you looked through that compass? A. I don't know. Mr. Kinzie was then pretty much of a stranger to me, and they were all strangers to me except Mr. Snow.

Q. Was Robert Kenzie there? A. No, sir, I don't think he was.

Q. Was Capt. Hunter? A. I was not acquainted with Mr. Hunter.

Q. What time of day was it? A. My impression is it was in the fore part of the day, near ten or eleven o'clock.

Q. Are you pretty positive of that? A. I should think so. It might vary from it.

Q. You were there but once? A. Not at that time.

Q. Were you there more than once during that survey in that vicinity? A. I was there while the compass was there, and I went back afterwards and did what I told you.

Q. When? A. That same day. I can hardly tell what time; as soon as it was convenient.

Q. Was it after dinner? A. I don't recollect.

Q. Was anybody there? A. No, sir.

Q. Did you ever go over to ascertain how far that line would run before it struck the water? You say there was land east of it? A. Yes, at the point where the channel would cut off the bar.

Q. That's when you paced five or six hundred feet? A. Yes.

Q. The same day? A. Yes, I guess within an hour or so.

Q. You didn't pace down after you glanced through the compass, but some hour or two afterwards? A. Yes.

Q. Nobody was present then? A. No; I was alone then.

Q. The compass wasn't there then? A. No, sir.

Q. You say you had no means of telling exactly where the land and water joined, on account of the ice? A. No, sir; that is, I

had no direct and positive means further than looking at the surface.

Q. You say the river was out there in February, '34? A. I couldn't fix the date, but I think that's it.

Q. You say it swept to the north as it went out? A. Yes, sir, the current canted to the north.

Q. The pier had been constructed across the channel to the sand bar? A. No, sir. I can't tell you without explaining it.

Q. The pier was not constructed across the south channel? A. The pier was not.

Q. Was it constructed across the sand bar? A. No, sir.

Q. No part of it? Yes, sir, a part of it.

THE COURT.—State how it was. A. This pier had been built on the south side, east of the fort, extending down from where the line of the pier would intersect with the river. The pier and the river ran very nearly in the same direction for two or three hundred feet. They carried that down to the channel of the river in the fall. Where the river sprung south they stopped it up, and put in on the other side turned timber abutments, and swung in a crib made for the purpose, to fill the gap there. That only came to the surface of the water. In high water it would go over some perhaps.

Q. A pier had been thrown across? A. Yes.

Q. And across the sand bar? A. Then the pier—beyond that there was a little vacancy left.

Q. Beyond the thing that was swung in, did that construction or pier extend to the east bank of the sand bar? A. I don't remember whether it did or not. It didn't go out there that winter as I know of.

Q. When the water started to go out, it came close up to the pier on the south side, did it not? A. Yes, sir. Such part of the pier as was there, it came close to it.

Q. As it crossed the sand bar, where was the channel first opened? A. Right along side of the south pier, as much as was made at that time. It passed along the part of the pier then built, and went into the lake.

Q. That was in February, '34? A. That is my impression, at the time of the freshet.

Q. It was kept from going down the channel by this crib? A. Yes.

Q. The river was changed from a southerly to an easterly course by this obstruction? A. Yes.

Q. Now you wish to be understood that the river, in going to the lake, left the south pier and went over to the other side? A. Yes.

Q. And left a strip of sand between it and the south pier? A. No, sir. It took all the sand above water as it went by the south

pier, until it got near the outer end, where the channel swung to the north.

Q. Did it first wash out a channel down to the pier? A. At the entrance it did, but at the east end it was shallow. At the east end the sand disappeared from the top of the water, but it was shallow, the current running to the north as it came out.

Q. How long did you watch it? A. I can't say I watched it any length of time. I had a great deal of curiosity to go and see it.

Q. You think it took away 150 feet? A. It took this corner as it swung off some 100, 120, 130 or 150 feet. I didn't measure it, but it washed off a broad surface.

Q. Where was the deepest part of that channel? A. I didn't measure it. I can guess it would be close to the inside where it first broke through that; there would be the deepest water at the narrowest place.

Q. How far from the south pier? A. Right at the south pier and the east bank of the river where it went into the sand. That was the deepest place. I speak now in that way from judgment, not from measurement.

Q. Do you know where the first crib was put in the north pier? A. No, you don't want me to guess, and it would be guessing with me.

Q. Do you know where the first pile was driven? A. No, sir, not from any facts.

Q. How wide was that channel that was washed out by the river in its passage? A. I should think when it first opened on the inside, it was possibly eighty feet from the south pier, the surface may be more. The channel was then at its flood, afterwards it varied as we had northeast storms. A northeaster would come and roll the sand up into the river and wash it off down into the river, and as the sea would go down that would appear again, but the channel diminished or narrowed. It diminished as the storm passed, that is, the channel diminished up at its narrow place.

Q. You don't know where the first crib was put down? A. I don't know by any measurements. I never took any pains to know how or where; I hadn't any curiosity to know where they started.

Q. Were you here when it was put in? A. I presume I was, for I was there all the time.

Q. Do you know whether one end was put on the shore and one end in the sand? A. That would only be to speak—

Q. Say you don't know, if you don't know? A. I don't know as I have told you.

Q. You know a place on the north pier where the angle is, don't you? A. I know where it was once.

Q. You know the location of Shapley's pile? A. No, sir, I don't know it well enough to know Shapley's pile.

Q. Haven't you been there and tried to pull it up? A. No, sir.
Q. A pile in that neighborhood, then? A. No, sir.
Q. Didn't you have a hand in that? A. No, sir.
Q. You know the spot in the north pier where, in the other trial, this angle was ascertained to have been? A. I did at the time of the trial.
Q. How far did you say the shore north of the pier was in '33, from that place where that angle was? A. I could only guess, if you want me to.
Q. You stated that very decidedly on the other trial, and perhaps have had reason to correct it since; but where did you place it before the Illinois Central case arose? A. don't think I ever located it there. I located the bank of the river, on the south side of the river, and then the width of the bar.
Q. You located the shore on the north pier. State where you thought it was? A. I had only an opinion, and no means of knowing.
Q. What did you state? A. I couldn't tell you what I said. I doubt whether I ever made such a statement as you say.
Q. Didn't you tell us over and over again on the other trials where the shore of the lake was in 1833, and where that line, extended to the pier, would strike it? A. No, sir; I can say what I did tell you if you will let me tell.
Q. Didn't you say that? A. What?
Q. Where the shore in '33 on the north pier was—the number of feet from the angle? A. No, sir.
Q. Are you positive about that? A. I am from the fact that I didn't think I would have forgotten it.
Q. Understand me, I mean, measuring from the angle or west end of the pier east, to locate the shore line on the pier? A. I don't think I ever made a statement of that, but I can tell you what I did tell you. I told you the distance that I located the north pier at the east end where it went in the sand-bar; and from that stand point on the south side of the sand-bar, where this line would steer.
Q. You located it on the south pier? A. Yes.
Q. Didn't you locate the north pier from that? A. No, sir, not the number of feet.
Q. Didn't you tell about a notch? A. No, sir, I guess not. I don't guess; I know I didn't.
Q. Where did you locate the west side of the sand-bar on the south pier? A. Near the angle where pier angled northerly. There was a little difference—some twenty or thirty feet it might have been—from where the other witnesses contended the east shore was.
Q. Didn't you make a difference of about three hundred feet? A. Where your witnesses put the sand-bar west, I put the river.

Q. Have you changed your opinion on that subject? A. No, sir, not one bit.

Q. Not for the brush and all that? A. No, sir.

Q. You are still positive on that? A. Yes, I am positive.

Q. Are you as positive in reference to that as you are in reference to the lake shore in '33? A. I might possibly be mistaken in that, but I have no idea that I am.

Q. But in the location of that pier? A. Oh, the other point. You have asked the question, now let me answer. The other point I have from practical knowledge, and I haven't told the Court all the knowledge I have of it yet.

Q. You have something now that you have never told before? A. No, sir, I have something that was in my other testimony, but was not called out.

Q. No doubt you will tell everything you can. You can manage the case better than the counsel. You understand it thoroughly? A. O, no sir, not at all.

Q. Haven't you looked up witnesses, and helped Mr. Jones prepare this case? A. I went with Mr. Fuller when he came up to our town—Milwaukee—this last winter or spring.

Mr. Fuller.—Tell all about it.

Witness.—He wanted I should go with him and introduce him to the witnesses who were here before. That was probably last February, at Milwaukee. I answered him that——

Q. Never mind that. Did you aid him in finding witnesses? A. Yes, I went with him.

Q. That wasn't the first time you went for the witnesses in this case? A. No, sir. Mr. Jones forwarded a little sum—thirty dollars, I think—to me.

Q. When? A. Before the last trial. I appropriated it to hunting up those witnesses. I hired a young man to go to the different witnesses, and took occasion myself when I would find them in town, to see them about coming down.

Q. What other aid have you rendered the defendant in preparing his case? A. I don't know what you call aid—nothing extra, except that.

Q. When you found a witness you—I was going to say pumped him, but I will say examined him? A. I can't say that I did. Mr. Fuller was with me the time I spoke of.

Q. When that $30 was received you went with a witness, told him what you thought or remembered, and asked him if that was the way he recollected it? A. No, we managed it as two sensible men, like the two learned counsel [Judge Morris and Mr. Wills,] might manage to talk about such a thing. [Laughter.]

Q. You looked up the witness? A. I did that time.

Q. Was that the first trial when you got the $30? A. Yes, sir, I think it was the first trial, I was summoned.

Q. Do you remember writing any letters to McGregor, to see

about his evidence? A. I think at the last trial there was more or less correspondence between us on the subject of whether he would be here.

Q. Did you mention his testimony? A. I couldn't say whether I did or not, but it would be very natural.

Q. From the interest you take in the case? A. It would be very natural to me.

Q. In point of fact, you have taken a very deep interest in this case? A. Nothing more than what is public.

Q. Haven't you felt a very deep interest in the result of this case at every trial, and been willing to aid Mr. Jones in it, as far as you could, every time? A. In bringing out facts to obtain justice I have, but nothing further.

Q. You have been employed twice in looking up witnesses, and you wrote to McGregor about it when you wrote to him? A. It would have been very natural for me to do it in writing to him.

Q. Have you written to any others? A. I don't think I have.

Q. Have you visited any? A. I visited with Mr. Fuller the other day, not otherwise.

Q. When the witnesses have been in consultation with the counsel you have generally been present? A. I can't say that.

Q. You have been often? A. I have been often, that is, I have been twice during this campaign.

Q. How many times before? A. That is more than I can tell.

Q. So many that you can't tell them all? A. I can't tell you.

Q. Have you before on the other trials? A. It might have been the same as on the present.

Q. Two or three times? A. Very likely.

Q. You located the west shore of the sand-bar at the angle in the pier where it bends to the north. Tell where, in reference to that angle, the line of the lake shore was in '33? A. Well, I shall have to guess at it. It must have been some three hundred feet, and a little upwards. I should judge odds of that.

Q. Was it east or west from that place? A. It is the distance across the sand-bar.

Q. [Presenting map.] Starting at the angle in the south pier where it bends to the north, and crossing the Chicago river, and going to the place where the shore was in '33, would it be east or west, and if so, how much? A. I could hardly tell that, only the sand-bar—and that is a matter of guess work, to some extent—was probably three hundred feet across.

Q. Was the original shore across there three hundred feet angling or straight? A. I should think pretty nearly at right angles—bearing probably a little south of a right angle. I don't know. I mean a little south of east.

Q. You don't understand me. Where did you locate the east line of the sand-bar in reference to that angle? A. The angle was very near the west bank of the sand-bar. When you find that

angle you go about three hundred feet east, and that would fetch you across the sand-bar where the sand-bar crossed what constitutes the Chicago river.

Q. Where would that bring the shore north of the north pier? A. I couldn't tell that without looking at it, because I would be just as likely to make a mistake as to guess right.

Q. You know the general direction? A. No, sir.

Q. What as to the points of the compass? A. They both angled very much across this between the points. Did you ask if the pier crossed the bar at right angles? It was something near it.

Q. Did the original shore run straight north and south, or angling? A. The general direction, if you speak of the points of the compass, would be probably east of south. I think it is likely that it was very nearly north and south; but a little east of the two. I think when you come down from North Water street to where the harbor is now, it runs east, I think.

Q. That is your recollection? A. That is, as to the points of the compass.

Q. The general shore then run that way? A. That's my idea. It's very little, not much.

Q. In those other examinations did you not locate the shore on the north pier by the sand-bar and the south pier? A. I don't think I did go so far as measuring the distance on the north pier was concerned.

Q. Did you state whether it would go several hundred feet east of the angle in the north pier? A. I don't think I fixed a point there, because I don't believe I knew that point.

Q. There is an angle at the south pier where you thought the east bank of the river was? A. Yes, it was within twenty-five or thirty feet of that.

Q. There was an angle in the north pier pretty nearly opposite? A. There is an angle, but I can't tell what are the points from the south pier angle. That angle was probably, if you want a guess, a little east of north from the angle in the south pier.

Q. Would the lake shore go east or west of it? A. East of it.

Q. How far? A. I don't know.

Q. You say the lake shore was east of the west end of the pier? A. There is no doubt about that.

Q. How far? A. I don't know how many feet.

Q. How many? A. I don't know. I have no doubt it was a good many. The west end of the pier was away west of the lake shore as it was in '33.

Q. How many feet? A. Do you want me to guess at it?

Q. Put it in any shape. I observe that you guess whenever I put a question that you don't want to answer. A. I am willing to guess at this.

Q. You stated this distance on direct examination? A. No, sir, have not.

Q. Tell me now how far? A. From the west end of the north pier on the river bank to the lake shore, it was probably three hundred to four hundred feet in 1833.

Q. Repeat that to the jury. A. The pier was not there in '33, but locating the river and the distance across the bar, I should think it would be from three hundred and fifty to four hundred feet, that the shore would be east of the angle in the north pier.

Q. You feel pretty confident of that? A. No, sir, you asked me for a guess, and I have given it to you as near as my impressions would carry me.

Q. Didn't you swear a little more positively to that on the other trials than now? A. No, sir, I don't think I did because I never pretended to know anything about that north pier.

Q. Did you ever examine to see where the piles were driven in that north pier? A. Oh, no, I couldn't know anything about it.

Q. During the other trials didn't you go over the north pier, and from that first crib didn't you find piles every ten feet? A. I don't think there was any such thing in my statement. I never looked with a view of giving testimony.

Q. Didn't you go with the judge and jury? A. Yes.

Q. Were not those piles pointed out to the judge and jury from the place called Shapley's pile every ten feet east? A. I was there and—

Q. Answer me directly? A. I was there with them and I saw piles.

Q. Didn't you see them on both sides of the cribs? A. I can't tell you, not positive. Now I will tell you. We went there with the judge and jury. Shapley and myself went there. Shapley went right to a particular point and says, "there's the pile," and there he started the pier. Gentlemen, I didn't know anything about this. They said so. I was on that side of the river, a stranger so far as knowing the facts in regard to the pier were concerned, and came from there to the south side.

Q. Didn't Shapley point out from that point east, piles driven every ten feet? A. I can't tell you what he did do. I didn't go there with a view of knowing it as a juror.

Q. When Shapley pointed out to you that pile, and says "this is Shapley's pile," how far was that from the lake shore of '33? A. I don't like to say.

Q. How far do you think? A. I can't tell you.

Q. Do you know where that pile was driven with reference to the west end of the pier? A. No, sir, I can't tell you.

Q. Now didn't you know that? A. I know where we were then, he put his finger on a pile, and says, "that's the pile."

Q. Do you know whether that was east or west of the first or second crib? A. No, sir.

Q. Or whether it was near the angle? A. No, sir, I couldn't tell you.

Q. Do you know that from the angle, the pier was constructed east in a different manner from what it was west? A. No, sir, I don't know that.

Q. Were you present during the other trial? A. Yes.

Q. Do you remember that you heard Shapley testify about putting in the first crib and driving that pile? A. I have a general knowledge of his testimony. I presume I heard that, but I never heard so much on this subject. I don't remember.

Q. You heard him describe how they were driven? A. I presume I did.

Q. Were you down to see whether these piles were there? A. I went down.

Q. Do you say you don't know whether you found them or not? A. No, sir, I say Shapley put his finger on the pile, and says, "this is the pile."

Q. Don't you remember that the piles were every ten feet east of that? A. No, sir, we didn't measure. I didn't examine. I went there not understanding that I knew anything from which to give testimony as to the north pier.

Q. There were piles there east of that? A. Yes.

Q. Were any west of that point? A. I can't tell you.

Q. Did you then go over on the south pier? A. Yes.

Q. Right opposite that place on the north pier where these piles were driven ten feet apart, which Shapley contended were in the lake, and you on the sand bar, did you find piles driven on both sides of the pier? A. It's my impression there was piles there. There was spiles on the pier and sticks of timber, filling, I guess, twelve inch mortices.

Q. Did you find any piles driven west of that angle, on the south side of the south pier? A. Yes, there were some piles in there.

Q. Were they driven regularly as here? A. No, sir. They were the same kind of piles. They were not hewed. I think they were round piles. It was the same kind of a crib.

Q. Did you find that kind of piles there? A. No, sir.

Q. Did you when you came to the river side? A. I have been talking about the river side—that is, the west side—in my answers.

Q. When you left the bend in the south pier, and came west of the sand bar, as Shapley said, did you, on the south side of the south pier, find any piles driven all along there, as east of that point? A. No, sir, I told you that was a different construction. I didn't see any square piles.

Q. When you got about three hundred feet from what you called the sand-bar to what he called the channel, did you find any piles driven? A. I can't understand you. Let me tell you—

Q. No, answer me? A. If you'll give me an opportunity—

Q. Just answer my questions? A. I hope the Court will protect me, and you'll ask direct and intelligible questions.

Q. I will try to. We have got across Shapley's sand-bar, going west, to what Snapley called the east side of the river. Starting at the angle in the south pier, to go west across that three hundred feet, you say you find no piles in the south pier? A. I say it was a different structure. We found piles, but not of that kind.

Q. For three hundred feet going west, to where he said was the bed of the river, did you find any piles or did you not? A. I don't know where he said the old bed was, but there was a different structure, and some scattering piles.

Q. Was a place pointed out to you where a deep hole had been south of the south pier, by Shapley? A. No, sir, I think not. May I tell you what he referred to? There is a deep hole, but it is not where you are trying to locate it.

Q. Where do you think the hole is? A. I think the hole, wherever there was one, was where there were some high piles on the south side of where that crib was run in between the two cribs to stop the river.

Q. You think it was in the bed of the river? A. Yes.

Q. How far from the Fort, east? A. From near the gate it was some six hundred and seventy-six feet—the gate of the old Fort. Probably I don't come within five feet or inches of it, but it came up nearly opposite to where the old gate was. The gate was standing then, at the time of the last trial.

Q. How far was the shore, at the sand-bar, from that point? A. I think, if I recollect correctly now, it was close to six hundred and seventy feet to the east side of the river, or the angle in the pier. That's what I thought at that time, if I haven't made a mistake in measuring.

Q. Then how far across the sand-bar? A. three hundred feet. I didn't measure that, but the other I did.

Q. If the line of the lake shore of '33 was not within three hundred feet from where the angle in that pier is, and you are mistaken three hundred feet in that, you may be mistaken in regard to the lot? A. No, sir, I couldn't be mistaken about the east line of the lot. I could give you further testimony on that.

Q. Did you measure the distance from the place where you looked through the compass to the lake shore eastward, on the line of North Water street? A. No, sir, if I understood your question. I didn't measure east from the northeast corner of 34.

Q. You have stated that the ice varied from being little or nothing in thickness, up to perhaps eight feet high? A. That's a mere matter of guess.

Q. Will you state that there was ice four feet high, opposite the south line of North Water street, following that street to the

lake? A. I should be satisfied it was not, if you will allow me to guess at it.

Q. Was it two feet? A. No, sir.

Q. How high was it? A. I couldn't tell you whether there was any height of consequence. If my idea is correct, the beach generally was covered with a mixture of sand and ice. It spreads over and freezes a little and forms in cold weather, and then it washes out.

Q. You judged of distances by the eye? A. I don't know as I judged of that distance. I didn't care for it. That is, from the shore to North Water street, at that point. It wasn't a great ways.

Q. How many feet? A. I know how much it was from this testimony, independent of that. I should think that was pretty near right. If I hadn't heard that, I should have had something of an idea.

Q. Did you say the ground was frozen? A. I think it was not, for a distance of five or six inches.

Q. Was it before? A. I don't know. There had been a few days of very nice, fine weather, but very cold just before that, and the river covered with ice, and showing floating ice in the lake. At that time, I don't know as I could tell you. Floating ice comes and goes with the west and south-west winds. I don't remember any then.

Q. What sort of a day was it? A. A clear day—good weather. It had been thawing. It was nice weather. The snow had disappeared. There had been a little snow, and it was melting.

Q. Was any snow on the ground? A. I think not; my impression is, the ground was bare. We hadn't had any snow for some days. It was something like this snow the other day.

Q. You say you didn't know how the piles in the first and second cribs were driven, and how the cribs were laid on the north pier? A. I don't think I did. I may have seen them. I didn't have any interest in them and they didn't attract my attention. I have no recollection how they were put up there or the date when.

Q. Did you testify on the other trial as to the length of the line between 34 and 35 to where it struck the lake? A. No further than by measuring down there until I got far enough to reach what I supposed would be the channel.

Q. How far was it from the corner to the lake shore on Water street? A. I went down until I got a range in the river, and I found that stake which was a stake put there by those who sur—

Q. Didn't you testify on the other trial "from line of 34 and 35 to water of lake on Water street, was one hundred to one hun-

dred and ten feet?" A. No, sir, I did not. I take it that he asked me the line between 34 and 35 running to the pier.

Q. No, sir, running east on Water street to the lake? A. Oh, yes, I might have stated that at one hundred to one hundred and ten feet as a guess.

Q. From the place where you said the compass was to the lake shore was one hundred to one hundred and ten feet? A. Oh, yes, I was not interested to find that out, but there was a space there.

Q. Is that your best recollection now? A. I couldn't say, my recollection is so confused with the facts from hearing the other testimony that I can't distinguish recollection from facts.

Q. You said before it was from one hundred to one hundred and ten feet? A. As a matter of guess. There was a wide space—I have no recollection how wide. It might have been eighty to one hundred or one hundred and ten feet, somewhere along there, very indefinite. The lake was close by.

Q. You stood there at the compass and looked to the lake? A. I looked off at right angles.

Q. You then looked down south? A. No, sir, I didn't turn the compass to the lake. I looked around with my eye.

Q. You think you turned the compass around, which way did you turn it? A. I must have stood towards the lake, if I turned it around; and then I turned it towards the south, I think.

Q. You have an impression of how far the lake shore was from that point? A. I have told you the best information I have. I can tell you now, for I have learned it from other witnesses as being eighty-four feet. If you had asked me before, I should say one hundred, or close by.

Q. Independent of that you would answer one hundred or one hundred and ten feet? A. It might be if I hadn't heard. I have an impression on my mind that that was about the distance.

Q. Did you speak to either of the gentlemen when you looked through the compass? A. I am very sure I did not. I did not mean to say anything that would lead to the suspicion that I was any more than a mere looker on for the moment.

Q It was very rapid? A. Not very. I might have talked with Mr. Snow.

Q. Didn't you just say that you didn't talk to him? A. Well, not in regard to that. I should doubt whether I said anything. When I come about men engaged in such a business I shouldn't say anything to them. I didn't say anything to them in relation to what they were doing.

Q. Then it was rapidly done? A. I looked through until I was satisfied.

Q. Did you buy any of these water lots? A. I bought water lots.

Q. Which? A. I bought lot 11.

Q. You didn't buy any of these? A. No, sir, I didn't buy down there. I guess there was but one or two offered for sale.

Q. Did you see that map at the sale? A. I saw Mr. Snow with a map in his hand.

Objected to.

Q. You didn't buy either of these two lots that you examined? A. No, sir, not at that time—nor at any time. I did nothing except what was done through McGregor.

Q. How much accretion do you think was made in 1835 from the original lake shore? A. As I said before, I have no measurement, but I have no doubt at the time I went away, when we loaded down at the pier, which was November—or, I rather think, in the latter days of October—at that time when I went away, and our vessel lay beside the pier, the accretion was going on; the question was asked how much I thought the accretion was, and I answered "probably one hundred and fifty feet."

Q. How much was it? A. It was one hundred and fifty or two hundred feet—if anything, more than that. It would go over rather than fall short of that, from where it was in 1833.

Q. Didn't you state that one hundred and fifty feet was carried away by the river? A. Not where the lake shore was. As the river came out there was a circle coming around in here a hundred or odd feet, and it swung around there, and for some four hundred feet along there it was swept away. [Witness illustrated by means of a book and the corner of the table.]

Q. Now, wherever that land was, and wherever the pier and the shore were, how much was the accretion east of the shore as it existed in 1833? A. That's what I say, it was from one hundred and fifty to two hundred feet. If I altered that at all it would be to go over.

Q. That pier was put in in the summer of '34? A. Yes.

Q. Do you remember how many cribs out the accretion was when you went away? A. No, sir.

Q. Do you remember of seeing a piece of timber passing up on the north, by which the men went on or off? A. No, sir; that is, I might have walked up on a timber, but I don't remember how we got on. I don't remember any particular point.

Q. Do you remember an L or small crib at right angles to the north pier, near the west end of the pier? A. No, sir.

Q. Did you at any time see the water running in from the north behind the west end of the pier and discharging itself there, before you went away in the fall? A. No, sir, not in the fall.

Q. Do you remember of seeing it? A. You mean the channel behind the north pier. No, sir, there was no such thing there in '35.

Q. Do you remember of seeing it? A. No, sir. I should have seen it if it had been there.

Q. I have not asked you that. I asked if you remembered

and you volunteered the statement that it was not there. A. I remember seeing the thing you are talking about.

Q. Perhaps you did, and perhaps you didn't? A. Then you haven't told the truth to me, or asked the question as you meant to ask it. You asked if I saw a channel on the north side of the pier that fall.

Q. I asked you if you saw the water discharging itself from the lake into the river in 1835? A. And I tell you I didn't, and it wasn't there. I understand you, but I can't tell you if you won't let me.

THE COURT—You can make any explanation you desire.

Witness—In the fall of 1834, immediately after that crib was put in, there came a heavy blow, and it cut a hole on the north side of that north pier through into the river. It was a small place—a little channel—where, while the storm was raging, probably a yawl boat would go through; but they went to work immediately and secured it, and from that day until I went away there was no break on the north side. That was in the fall of 1834.

Q. Has that been the subject of consultation between you and the counsel or the witnesses for the defence, as to how you would get rid of it? A. No, sir, it has not.

Q. Has it never been talked over, as to the dates and the fact? A. Not between me and the witnesses. Something was said by Judge Higgins to me about that, within two or three days, and I answered him just as I answer you.

Q. When did you leave here? A. The last part of October, or the first of November, 1835.

Q. Do you swear it didn't break through after you went away? A. It didn't break through before I went away. I don't know anything about it after I went away.

Q. You volunteered the statement that it never took place in the fall of 1835? A. I meant to have you understand it.

Q. You didn't mean to have it understood that it didn't occur after you left? A. No, sir, not after I left. Up to the time I went away there was no such thing.

Q. What were you doing in September, 1835? A. I was about the city, gathering up and fixing to go away. I had been doing considerable business in timber, lumber, mason and joiner work, and was settling up.

Q. Where did you live? A. On the north end of the lot, on the northwest corner of Clark and Lake streets, on this side, in the fall of '35.

Q. In September had you any business that carried you to the north pier? A. Nothing further than passing round there. I hadn't any business that carried me there.

Q. Have you any recollection of being, twenty-five years ago

on the north pier, in the month of September, 1835? A. I don't think I have.

Q. What were you doing in October? A. The same as in September. I have no recollection of being there except when I was going away.

Q. Where was that vessel? A. Some considerable distance out on the north pier, pretty well towards the end.

Q. What vessel? A. The "Hiram."

Q. Where from? A. She was here.

Q. Where did she go afterwards? A. To Milwaukee. I don't know where she came from.

Q. When did you return? A. I don't know. I think in the winter or spring, by land. I recollect I was here in the spring. I came here in the "Wisconsin," and staid here, I guess, three or four weeks.

Q. Do you remember that? A. I think I did.

Q. Were you here in the fall, after that? A. I was very likely to have been. I was here every few weeks or months.

Q. Were you here in the fall of '35, after October? A. No, sir, I was back in '36.

Q. Had there been any severe storms after you left in the fall of '35? A. I don't recollect any in particular.

Q. Name the witnesses to whom you introduced Mr. Fuller. A. Mr. Burdick, Mr. Delany, Mr. Skinner, Mr. Odell and Mr. Brown, living at Milwaukee or in that neighborhood.

Q. Did you see them all at one time? A. Mr. Fuller came there and got a carriage or vehicle, and we went to them, except Mr. Brown, whom we met coming into town.

Q. Did you see them together? A. No, sir, separately.

Q. Were you present when he conversed with them? A. I think I was.

Q. You would throw in a suggestion now and then? A. I can tell what took place, if you want to hear it.

Mr. Fuller—Tell all we did and said.

Q. Did you make suggestions or not? A. Not the least, sir, until they had given their statement to Mr. Fuller.

Q. Did you make suggestions at all? A. It would be rather singular if I stood by without saying a word

Q. Answer me directly. A. I should say yes, if I said anything. I wouldn't be likely to stand by an hour and not say anything.

Q. You did make suggestions, then? A. I won't say so. I couldn't come down to that point; but you accused me of being officious before when I was here, and so I was cautious. I told Mr. Fuller I didn't want to go. I thought to put you to one side from accusing me.

Direct examination resumed by Mr. Fuller.

Q. I omitted to ask one question in examining you. State

whether at any time after you were on the ground, in February, and looked through the compass, you went down again that summer, and if so, what you did to measure the line and take the distance between 34 and 35? A. I went down there I think some time in May. I couldn't fix the time; but it was in the spring, after the lake was open and very smooth. I went with two men.

Q. Who? A. A man we called "Jerry"—his name was Penoyer—and a man named Vanderburger. We used to call him "Doctor." We took that corner of 34 and 35, and drew a line there on the front of 34, and then drew it off in a southern direction, where we supposed the line of the lot would be; and then we measured eight feet on one side of the angle at the corner, and six feet on the other side, and ten feet across, which gives the square or right angle, and that gave us the angle of the lot. After that was done I went down the line to see whether there was not land enough to intersect the pier before it went into the lake; and being guided by that stake I was satisfied it was safe, and instructed Mr. McGregor to buy the lots afterwards.

Q. Which line do you refer to? A. The east line of 34 and west line of 35—the line between the two. We worked from the corner of 34 and 35.

Q. Did you or not at that time pace or measure the length of that line? A. We stepped it down until we were satisfied we had got far enough—four or five hundred feet.

Q. Was there anything on the ground to indicate where the pier would be built? A. No, sir, nothing more than this stake—a big stake, four inches in diameter, I think, which stood there some time. It appeared to be put in with some trouble. This was the May following the sale, if I recollect aright. We got the north line of the lots on the street by the stake and stretched a line off on what we supposed was the east line of 35 southwards. Then measuring from the corner, we put down two lines and four stakes, and measuring from where the two lines crossed in the corner, on the one line eight feet, and the other six feet, and the line across the angle ten feet, that would give us a right angle. That I learned from being a practical mechanic. That's the way my father learnt me to square a building. From that we set our stakes and ranged to where it would strike the lake. It was far enough so that I thought it was safe, and instructed Mr. McGregor to buy the property east of that.

Q. What lot was this? A. It was between lots 34 and 35. There was no trouble in ascertaining it at that time. The lots were numbered then.

Q. Were there any lots east of it? A. There was a lot and a fraction east of it—of that line.

Mr. Lincoln—What has become of those two men who assisted you at that time? A. They are both dead.

Second cross-examination by Mr Arnold.

Q. You say in May you had no difficulty in finding the lots 34 and 35? A. No, sir, no difficulty.

Q. How did you find them? A. In the first place, I knew where the corners were to lot 11, and I followed right down.

Q. Did you count the lots from lot 11 to 35? A. I don't know but we counted them from the street this side. I hardly think we counted from lot 11. I don't know but we might. We knew how many lots.

Q. From what street did you count? A. I can't name the street. I think lot 12 was on a street west of that street that goes up past the old Lake House—a north and south street. It may have been one street further west.

Q. Did you count anywhere? A. Yes, sir, we counted to ascertain whether we got the lots right.

Q. Do you remember counting? A. I can't tell you exactly about the counting.

Q. Did you count at all? A. Yes, sir, we found them.

Q. Did you count the lots to find them? A. I presume I did. I think I remember it.

Q. You are not sure? A. Yes, I be, pretty sure, I know I did.

Q. Why didn't you answer me at first that you counted them? A. I didn't suppose it was essential. I am satisfied we counted down till we found that corner; and another reason is, we were within one or two lots of the lake.

Q. You give reasons; will you answer me directly? A. I will try to, if you will ask me intelligibly.

Q. Do you remember counting those lots? A. I have no doubt but what we counted them.

Q. Did you count them? A. We did count them. We found the corner we wanted. I did count until we found the corner we wanted.

Q. You answered me at first that you didn't exactly recollect? A. Yes.

Q. If you had no recollection, why didn't you say so? A. It didn't come into my mind that it was necessary to be so particular.

Q. You are satisfied now that you counted? A. I am satisfied now.

Q. Where did you begin? A. I knew where lots 11 and 12 were, and probably worked from that. I have no doubt we started with that.

Q. Do you remember it? A. Yes.

Q. Then why did you state that you counted from a certain street? A. 11 or 12 is on the corner, if I remember aright, and we counted from there. I had bought 11 and I knew where it was. I think that was our starting point.

Q. Did you find the lots all with stakes? A. That's more than I can tell you. I think we found most of them. I don't think there's any doubt but that we found most of them.

Q. Do you remember finding the stakes? A. I think I do, but may have missed a stake; but if we missed that stake, we knew the distance and could find the next stake. I don't know that we lost any.

Q. Have you any recollection on this subject? A. No, sir, not to—

Q. You have no recollection? A. I won't answer. I can't answer to satisfy you. You find fault with me any how.

Q. If you'll answer me directly, we'll get along. A. You don't want me to tell it. I see what you want—you don't wish me to tell it, and I don't mean that you shall mislead me to state what is not so.

Q. I don't want to do that, nor do I want you to make an argument on your side in the shape of a witness. A. No, sir, I won't.

Q. I only want your memory. A. Well, it's good on that point.

Mr. Lincoln—That's enough. He said he only wanted his memory, and the witness has given it to him. Now they're even.

Q. Were any buildings upon any lot from 11 to 35? A. No, sir.

Q. Are you sure of that? A. Yes.

Q. Were any obstructions—any timbers, laid there? A. I can't tell as to timbers, but no buildings—no obstruction to following the line right down—no buildings or fences that I can remember.

Q. What sort of stakes did you find there in the spring of '33? A. Stakes that had been split out of some kind of wood. I don't remember how high they were. They were small, perhaps three or four to seven or eight inches above ground—some, may be, higher.

Q. Did you count from 11 to 33? A. I counted and examined until I was perfectly satisfied by counting down, of the place where we wanted to go.

Mr. Fuller proposed to read the testimony of Alexander McGregor, admitted to be read, given at the trial of 1853, as printed in the bill of exceptions.

Mr. Arnold objected, on the ground that there was a deposition of this witness on file, which was better evidence than the bill of exceptions.

Objection overruled.

Mr. Fuller proceeded to read as follows:

"ALEXANDER MCGREGOR, for defendant, testified: Came to

Chicago 3d February, 1833. Remember crib work on south side; travelled over it very frequently. Timber there in spring of 1834 was of flattened white pine timber; put in with round timber, flattened on one side. Saw none of cribs when they were put in; on north branch of Chicago river. In fall of 1833 I was getting piles. B. Jones was partner with me. I got in poles for bottom crib; those poles were for throwing stone in upon, and new put in; they were all round and of white oak timber. Saw crib-work first in spring of 1834. I have seen the same kind of timber since, lately; looking same, excepting age. The timbers I speak of had projected south two and a half or three feet in 1834; I rafted through there in 1834; rafted twelve hundred logs; had got beached a good many times; put ten or twelve abreast.

There are some piles standing south of pier now, which were there in '35 and '36, and which I hung on to; that pile is first one driven; hitch to it over fifty times in summer and fall of 1834. Timber I find now same as it was in 1834; projects south; superstructure projects north; each shore of river was thirty feet east of these projection cribs. East side of river is near puncheon-work; it rested on brush and stones, &c.; saw puncheon-work sticking up in 1834; have no doubt of it; have poled up a great many times. Remember lake shore about Water street; the general direction of shore going south was a little east of south. My object at time was to purchase fraction of 35, in order to get accretion; pier was not laid then. The Hathaway map is generally correct. Line inclines to west, more south of bar. I first worked for Alanson Sweet. When I began acquaintance with Snow; survey was completed when I went down and saw stakes had been set; Sweet and I went down in February, 1833; we took an iron square and ranged down through between 34 and 35 from corner, and sighted down lake; we paced it, and went off to see where pier came or was to come; we ranged along up Water street by stakes, and then ranged south by square. A man that could see straight to shoot could see this line; we paced it off; it was more than five hundred feet; would have been half a mile to the water. There was land beyond a long distance. Sweet and I alone. Went down with a view of purchasing on account of accretion; had little means, and thought this best chance for speculation; went afterwards and measured at request of Benj. Jones, after I had disposed of lot. Contract from J. H. Kinzie was different; my object by it was defeated; I found that by records J. H. Kinzie had deceived me, and on record had no interest in it. The fraction came up to pier. I was requested by Jones to help find line; we had no means to find line. I got wooden square in summer or fall of 1834 made. I went up and traced lots along to corner of 34 and 35; Samuel Jackson and myself sighted through; Jones stood on pier, so he could notch on pier; I went down to pier; Jones made notch in pier where

line struck it; lake was east of that line. Am certain I found corner of 34 and 35; I counted straight, commencing at cross street, and had map at time; it was lot 15, I think; left one lot and fraction east; I am sure it was corner of 34 and 35; began at first lot west of lake shore; began at that corner lot 15 on Water street; at cross street found lot corner of 34 and '5, 35 and '6; measured and found four hundred feet from it; line of Water street; points of lots 34 and '5 to lake shore; had known corners from 1833; was familiar with them. Sand had drifted somewhat over stake, sometimes. There was ice when we first went down on lake shore; some considerable on shore, piled up; am sure of that. I can find it without difficulty now; have seen similar marks on pier; timbers rotted; don't know as I could tell his marks from any other.

Cross-examined.—Remember B. Jones coming to see me to take deposition; had a house burned down day before; he brought two maps, one was certified copy, recorded map of Kinzie's Addition, and other copy original map; recollect but two; I wrote out answer; Gardner wrote them and read them out. Think I made but one, showing difference in lake shore. Think Jones was there in December; Jones had been there two days before I made map. From north end of lot 34 and '5 was eighty five to one hundred feet to lake shore; in winter of '33.

Stakes were driven before I went down; did not state on last trial that stakes were there driven; did not count stakes at that particular time; did not testify that he did not count stakes at any time. Went with B. Jones in summer or fall of 1834. I was hauling out timber then. In going to shops and Government office on sand-bar in 1834. Think there was blacksmith's shop there. In going to their shop, proved from Water street, the shop would be on 29 or 30, I think. I knew Kinzie's warehouse; would be on 22, about; warehouse not far from opposite or little east of due north line; twenty feet east; more than half of stakes of lot were there; but few had disappeared; ends were above ground, sticking out from one to seven or eight inches. Am sure line of 34 did not strike lake shore before it reached pier. At time was there with Sweet; did not see where line would strike shore, on account of ice; seventy or eighty feet wide, six or eight feet high. Think there would be difficulty in finding where it, lake shore, would come. I found corner of lot 35, northeast corner. That line would extend down two or three hundred feet; I think two or three hundred feet. This is east line of 35. When I gave in deposition, I attached letter of B. Jones to me. At mouth of river ice was two hundred feet wide; opposite lot 35 there was seventy or eighty feet width of ice, and so after in February, 1833. Notch B. Jones made was about forty-three feet, or two-thirds width of lot east of west line of 35; line of 34 and 35 extended where Sweet and

I was; they would go on to mouth of river; would strike ice Think sand-bar was about one thousand feet wide; river was two hundred feet wide; from west bank of river was four hundred feet; sand-bar was two hundred and fifty or three hundred feet wide at pier. Where river run out from edge of prairie to deep water. Think 30 or 31 would be on the west side of sand-bar; think 35 would cut sand-bar on east side; 30 would touch edge of bar. This is my opinion. Line of 26 and 27 would strike west bank of river, might be line of 28; made this map three years ago; can't say whether my recollection was better then than now. This is map, shown me, that I made. I amused myself by pulling up pile; think I suggested it; Jones assented; pile was on line between 34 and 35; precisely south of notch; I had no opinion about it; if I had had good apparatus, could have raised it in two days. Pile is sixteen or seventeen feet long; part of pile was rotten, seventeen feet under surface of water; no difference in appearance whole length; looked as though it had been in quicksand. I employed three men, strangers to me. Mr. Jones's son was there; Mr. Burdick, too. Thomas Cook brought the beer; he helped move the timber. Had no controversy with any one; no threats. Think pile driven by pile-driver of Government should be in from eighteen to thirty feet; the pile is on north side of pier, inside. There are some five or six east before you come to those piles, with a ring mark on them.

Direct.—The one thousand feet of sand-bar was at mouth of river, including bar above and below water—shoal water. This is seventeen feet below surface water, speaking pile. That pile had no clay about it; that pile was driven on sand-bar; am sure of it as I am in this room. Bar was there in 1833-34. No evidences about piles being driven along from this pile; we pulled up; shake my belief of its location; have no knowledge of how piles were driven. There was five or six feet of ice on shore. Where there was no ice, have reason to believe that lake shore extended. I copied lake shore from my recollection, and not from map; map was made to get lake shore, and not river particularly.

Cross-examined.—If I had known pile was seventeen feet long, would not have raised it; it was too much labor.

Mr. Fuller also offered in evidence and read to the jury the testimony of Philip Maxwell, also admitted to be dead, as follows:

Dr. Maxwell came in '33; was surgeon; quartered west side of fort. Was here when crib work was put down, under direction of Major Bender. Don't know how far it extended. When cribs were sunk it was to fill up channel. One crib was carried by; made a little jog on further side towards bar; crib extending on to bar shot south. Have seen it since; saw it every day for long time; from January, 1833, to 1837. Crossed over very frequently while Major Bender had charge. There was a timber extended

over, before crib was put in; difficulty had in stopping water. Crib had bottom, and they put in stone. The sand-bar was still east of sliding crib; perhaps five yards. Allen continued work when Bender left. Remember marsh very well. Plot of wild rice from west bank of river extending fifty or eighty feet; then one hundred and fifty feet sand and dry ground to picket. There was dry sand above the marsh, next to grass, on west; a little sand-beach east of marsh and next to river. River over two hundred feet in width along line of pier. First on bar when Hunter and Kinzie came down to lay out Kinzie's Addition. Bar was over four hundred feet. There was an ice bank on it. There was not much of a curve where artificial channel went out. Beach was generally north and south. Recollect of taking a wolf on bar. John Kinzie, and Sweet, and Robert Kinzie were there when addition was laid out. There was a good deal of ice on bar; but there was a bank of ice less at time of laying out plot; but high bank of ice, more ice than I have seen it at half time, since saw wolf. Ice lay there during February.

Cross-examined.—They arrived in February; they were two weeks in surveying; don't know when they commenced. Think ice fifteen feet high when they first came there; base twenty-five yards, irregular; think ice had fallen considerably when survey was made; ice disappears at some points; can't say as to ice north of pier. The crib in river was about very much like ordinary crib-work; most of timbers flattened, and 'tis generally round; of cribs that were sunk. Water twenty feet deep. Kinzie house, a line drawn from north gate of fort would leave to the east, most and perhaps all of it. Length of Kinzie house, forty feet; distance from lake shore to tree was; think the indentations would range from five to twenty feet; a pretty wide beach; there was a little sweep north, but it was wider where river debouched. Allen's map of 1837 shown; Allen not a professed engineer, but he was a correct, accurate man.

Re-direct.—Think Hathaway map more correct than other map; map represents coast more correctly. Remember Handy house; it would now be in lake 300 feet sure. Kinzie house was only house north side, and long, and therefore prominent; the Kinzie house was from northeast corner of garrison; line would strike house of Kinzie; this line was at beginning of pier north, and a little east of north gate.

THE COURT adjourned to half-past nine o'clock, to-morrow morning.

Sixth Day—Thursday, March 29, 1860.

THE COURT met at half-past nine o'clock, and the jury being called, the trial proceeded.

MORGAN L. BURDICK, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you first come to Chicago? A. About the first of May, 1833.

Q. Where did you come from? A. I came from Dayton, Ohio.

Q. How long did you remain here? A. About two years.

Q. Where did you go from here, and where have you resided since? A. Milwaukee.

Q. What did you do upon your arrival? A. Carpenter business.

Q. Where did you work? A. The summer of '33 I worked in putting in a mill on the Aux Plaines, about thirty miles west of here. In the fall of '33, in October and November, I think, I worked about two months near the Garrison.

Q. What did you do? A. I was boating wood across, opposite the Garrison to the north shore, and pulling it on the ground, east of the Garrison.

Q. What did you do the winter of '33-4? A. In the winter of '33-4 I was getting wood and hewing timber up on the north branch.

Q. What did you do during the spring and summer of '34? A. In the spring of '34 I helped put in the draw-bridge at the end of Dearborn street. In the fall of '34 I was rafting timber from the Calumet into the mouth of the river.

Q. When did the river break through north of the south pier? A. I think it was in the fore part of the winter of '34 sometime. I can't state precisely the time. I can't say that I was present when it broke through.

Q. How often in the fall of '34 did you have occasion to pass in and out with timber? A. I think I helped to get in three or four rafts in the fall of '34. In the spring of '35 I left here about the first of May, I think.

Q. Did you return here from Milwaukee that year? A. I could not tell at any one particular time, the date or time I returned; but I was here four or five times during the summer and fall of '35.

Q. In these returns did you come by land or water? A. By water. We came in on a vessel; landed on the north pier and came up that to the city. The vessel was fastened to the north pier at the time.

Q. How far out was the north pier built in '34, when you rafted

in timber from the Calumet? A. I should think it must have been some four or five hundred feet.

Q. In the spring of '35 when you left had any alterations been made in its length? A. I think there was some, but I can't tell how much.

Q. Describe in your own language, time and way, the effect which the breaking through of the river had upon the north shore, or the land next north to it. A. Before the river went through the line on the beach of the lake was nearly north and south, or the south side may have been a little east of south. After passing the mouth of the river or harbor on the north side, I think it bore a little west. After the water cut through and came out close to the edge of the south pier out here, this north point rounded off into the channel of the river north of the south pier, and for some distance north of where the north pier is now. I could not state positively the number of feet or rods that wore off back from the old shore. I should think probably one hundred feet or more. After the river broke through, the river channel flowed down to the south pier, but these cribs in the south pier were washed out and tipped up.

Judge Morris.—You say it was one hundred feet from the south pier? A. No, I think it was probably one hundred feet that was washed off at the north pier and still further north of that. I will try to show it so; it will be something as I had it in my mind at that time and now. [The witness proceeded to draw a pencil sketch, or diagram to illustrate his statement in reference to the washing and rounding off of the point north of the new mouth of the river in 1834. He then passed around to the jury and explained the diagram to them individually, and returning to the stand the examination proceeded.]

Q. You stated you didn't do any work upon the pier? A. No, sir, I didn't do any work on the pier.

Q. Did you observe the effect of the building of the north pier upon the land next north of it? A. I did.

Q. Tell when the land began to form off the north pier? A. I think it commenced making immediately after they commenced putting in the pier on the north side. I think that that gap filled up in a very short time. That corner in there filled up full from the original shore in a very short time after the cribs were put in.

Q. Describe on what occasion that corner washed off that you mentioned. A. I believe it was the effect of the northeast wind. It would carry the water north and northeast. A northeast wind coming up the lake would carry it west.

Q. State that again. A. The wind coming up the lake from the northeast would drive the current in rather towards the river, or away from it. I think it would be apt to drive it away—to drive the sand away.

Q. In what direction? A. It would be apt to drive it, I think, towards the pier.

Q How much land had made on the north side at the time you left, in the spring or winter of '34 or '35? A. I couldn't tell the number of feet. I should have to guess at it. I should think, in the spring of 1835, it had probably made up to two hundred feet or more, reckoning from near where the first cribs were put in on the beach of the lake.

Judge Morris—You mean from the shore at the time the pier was put in? A. Yes.

Q How many times did you say you returned that season of '35, after you went to Milwaukee? A. I think some four, or five, or six times, and probably more.

Q. When you returned in the fall, what did you observe on the north side? A. I had noticed, and made the remark myself, every time I came in, to some one on the vessel who came in with me from Milwaukee, but hadn't been here in some time, of the changes that were made on the north and also on the south side. As near as I can recollect, after the north pier was projected, the bar on the south side commenced disappearing immediately, and it began to fill up on the north side.

Q. How much had it made on the north side from the west end of the pier by the fall of 1835? A. I can't tell exactly; probably three, or four, or five hundred feet. I should think it was at least three hundred feet from the west end of the pier.

Mr. Wills—Three hundred feet had tumbled in of the original shore? A. Yes, it was three hundred feet right off here where the pier was put in.

Mr. Wills—Three hundred feet carried away? A. Oh, no, sir. I say that three hundred feet was added on up to the fall of '35.

Mr. Lincoln—That was filling up against the corner that that had washed off? A. Yes, sir.

Q. Do you recollect how high that pier was built above the water level, in the summer of '35? A. I think there was a considerable portion of it finished up and planked in the summer or fall of '35.

Q. About how much? A. Probably three hundred or four hundred feet, or probably more.

Q. Do you recollect the work they were doing at the pier as you came in with your timber from the Calumet, in the fall of '34? A. They were at work, I think, extending the north pier at that time.

Q. About how high was it carried above the water that fall? A. I think there was a considerable portion of it from the beach east was finished up some three or four feet—raised up, extending into the lake probably two hundred or three hundred feet.

Q. How was it during the summer of '35? A. I think it was finished up and a portion of it planked, but not all of it.

Q. How far was the pier built in the fall of '35, when you came from Milwaukee and tied to it? A. I should think the most of the north pier was built in the fall. I should have to guess how far—may be one thousand feet. I see, by the report here, it was more.

Mr. Wills—Have you been reading the report? A. No, sir, I heard it read here. When they finished it up it was probably four timbers above the water—some three timbers, and some two timbers. It dropped off gradually.

Q. Do you know the depth of water in each side of the pier, as it extended into the lake? A. No, sir.

Q. Where was it the shallowest? A. It was the shallowest on the north side of the pier. The shallowest part upon the length of the pier was towards the western end, I suppose.

Cross-examined by Mr. Arnold.

Q. When did you come to Chicago? A. About the first of May, 1833.

Q. That was the first time you came? A. Yes, sir.

Q. Did you testify on the other trial that you came July 29th, 1832? A. No, sir.

Q. It is so recorded here [printed bill of exceptions]. A. Then it is wrong, for I didn't state any such thing.

Q. How long did you remain here? A. About two years and a little over after coming here. I don't think I was away. I think I went away in the winter of 1834 to Milwaukee.

Q. According to the bill of exceptions, you testified that before you came to Chicago July 29th, 1832? A. That's my brother, William. They came the summer before.

Q. Where is your brother? A. In Wisconsin.

Q. Did Mr. Fuller visit here when he went up to see you? A. Not that I know of.

Q. Do you know why he isn't here? A. No, sir.

Q. Were you examined on the last trial? A. I believe so.

Q. In what were you engaged in the summer of 1833? A. I was helping to build a mill on the Aux Plaines, west of here.

Q. Were you here when they commenced working on the north pier? A. Yes, sir; I can't say I saw them throw the first shovelfull of sand, but I was there before the crib was put in—before it was all excavated. It was about half the length of the crib.

Q. Do you know where the angle is? A. I know where one angle is.

Q. The one near what is called Shapley's pile? A. No, sir, there is an angle west of that they pointed out to me.

Q. Isn't there an angle in that neighborhood? A. Not right close by it, I don't think.

Q. Isn't there an angle within thirty feet? A. I can't say—it may be so. I was there at the former trial.

Q. You saw the angle near there? A. Yes, sir.

Q. In what direction? A. It would be apt to drive it, I think, towards the pier.

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Q. Isn't there an angle within thirty feet? A. I can't say—it may be so. I was there at the former trial.

Q. You saw the angle near there? A. Yes, sir.

Q. Within thirty feet? A. I don't know how many feet. It may be thirty, it may be fifty. I probably couldn't come within fifty feet.

Q. Was that angle east or west from the pile? A. I think it was west.

Q. Wasn't it exactly twenty-two feet? I don't know; I didn't measure it.

Q. Did you see the crib put in? No, sir.

Q. At the other trial you saw the pile pointed out as Shapley's pile? A. Yes.

Q. From that pile eastward did you find piles driven at regular intervals of ten feet on both sides?

Objected to as not cross examination. Objection overruled.

A. Yes, sir.

Q. From that point west towards the Lake House, did you find piles driven at regular intervals? A. I can't answer that I did.

Q. Did you, on the south side, find two piles west from the Shapley pile, and east of the angle? No, I can't say. I have the impression they were right along up to the bend.

Q. But there were none west of it? A. No, sir, because there was no occasion for them. I didn't notice any on the north or south side, west of that angle.

Q. Where was the original lake shore in your judgment in reference to that angle? A. I think the lake shore was probably two hundred or three hundred feet east of that angle.

Q. Can you tell how that pile was driven? A. No, sir.

Q. What size was it? A. A foot square.

Q. How far was it driven into the sand? A. I can't tell you.

Q. Wasn't it pulled up? A. No, sir, not the Shapley pile. I think one that was somewhere near it.

Q. Shapley's pile was east of that? A. No, that was further east.

Q. How deep was it? A. Sixteen or seventeen feet.

Q. You say from the Shapley pile east for three hundred feet was sand, the original lake shore? A. About that.

Q. Have you any idea how that pile was driven into the sand sixteen or eighteen feet? A. I think, though I won't state it for a fact, that these piles were driven on the north side of that pier, and on the south side of the south pier with a hand pile-driver.

Q. Do you think they were driven sixteen or eighteen feet with a hand pile-driver? A. Yes.

Q. Did you ever try to drive a pile that far with a hand pile-driver? A. I never drove them as far, but I have helped. These cribs were ten or twelve feet high from the top of the timber down to the bottom on the sand.

Q. It was laid on the top of the sand was it? A. No, sir, it was excavated into the water.

Q. Did you see it done? A. I saw some of the timbers laid in.

Q. If you are mistaken in the lake shore two hundred feet, or if the lake shore was two hundred feet west of where you think it was, then when you say the accretion had made two hundred or three hundred feet in the fall of 1835, you would have to bring the accretion back that distance? A. Of course, but I don't think I was wrong.

Q. You didn't see that pile driven? A. No, sir.

Q. Neither of these piles driven? A. I don't think I did.

Q. Were those piles of the size of the one pulled up? A. Yes, there were mortices left in these timbers, the same size to a foot square pile.

Q. Then your testimony in regard to the shore on the north side of the pier depends of course on your starting point? A. Yes.

Q. If that is wrong the whole is wrong to the extent of two hundred or three hundred feet? A. Yes, sir.

Q. You place the east bank or lake shore about two hundred feet east of Shapley's pile? A. Yes. [Witness here passed round and explained the point in question to the jurors by the map.]

Judge Higgins.—How high was that pile, when it was driven above the water? A. I don't know, it was probably six or eight feet under water when it was driven.

Q. What did you pull it up with? A. Screws—jack-screws.

Q. Did you try another and break a chain there? A. We broke a chain. The pile was broken off by the surface of the water so that we couldn't get a good hold. It was rotten nearly at the surface of the water, so that it wouldn't pull, but we could pull where it was sound, and draw it up.

Q. Who helped you to pull it up? A. I think Mr. McGregor, myself and my brother. I can't tell who else.

Q. Was Mr. Jones? A. Mr. Jones' son was, a portion of the time. I think Mr. Jones was not. He might have come there, but not to stay any length of time.

Q. Had some of these piles iron rings around them, or had they the appearance of having had the corners cut off so as to put iron rings around them? A. I can't say as to that.

Q. Did you examine the shore on the south side, and the south pier, at the same time?

Objected to as not strictly cross-examination. Objection overruled.

A. I did.

Q. On the south pier nearly opposite the bend in the north pier, is there also a bend in the south pier? A. There was at that time.

Q. Right opposite the place you named, where piles were

driven in the north pier were piles driven in the south pier A. Yes, sir.

Q. At the distance of ten feet apart? A. Yes, sir.

Q. Tell where they were driven on both sides of this pier? A. Where the old bar was. The bar was east of that angle on both sides, I think.

Q. How were these piles driven, do you think, on dry land? A. I think these piles on the south side of the south pier, and on the north side of the north pier, were driven by the hand pile-driver. That's my idea.

Q. Were the piles on the south side of the south pier of the same size as those on the north side? A. The same size, because the mortices left for the timbers were all of the same size.

Q. Here is a space on the pier running, three hundred feet west of where the piles were driven on both sides, in which there were no piles driven on the south side? A. There were some round piles there.

Q. Towards the Garrison after they cross the bar, but in the space for two hundred and fifty or three hundred feet there was not a pile? A. In that gap I don't think there was a pile.

Q. From that angle was there a pile driven for two hundred feet west? A. I don't think there was.

Q. If it was water why were there not some piles there? A. That two hundred feet was a gap, they couldn't have driven piles in any way.

Q. There wasn't any driven? A. No, sir.

Q. That's what the other witnesses call the sand-bar; after you get over you find piles? A. Yes, across the river.

Q. Across what they call the sand-bar, and what you call the river? A. Yes.

Q. How were these piles driven? A. I don't know. Towards the Garrison, I think, they were driven the same way as across the bar by a hand pile-driver.

Q. Did you see, at any time, a gap in the south pier? A. There was a gap across the river, on the east shore of the river. It extended into the east channel of the river some. The pier that came on the south side extended into the river a distance, and then there was a space of seventy, or eighty, or ninety or one hundred feet, and then they extended it east towards the lake, and there was a crib made and swung in that gap. There was a breach there.

Q. What was put in? A. Brush and stone

Q. What sort of brush? A. I don't know. I have the impression it was oak brush.

Q. Are you positive? A. I think I am. It might have been some other. It was cut right down on the north shore, below the harbor.

Q. That brush was about the angle of the pier? A. Yes, sir.

Q. If you should take it up then, and not find any, would you be mistaken? A. If there wasn't any there I might be mistaken.

Q. If you should find it at another place, where the others locate the east bank of the river, would you think they were right? A. I think I'm right.

Q. Suppose you found the brush three hundred feet west of the place where you think it was put? A. I should think then probably I might be mistaken.

Q. If you were mistaken on the south side two hundred feet, you would be mistaken as to the location of the accretion two hundred feet on the north side? A. Yes, sir.

Q. The accretion would be two hundred feet further west than you have located it? A. Yes, sir, if that's the case.

Q. How wide was the channel of the river south of the north pier? A. I think when it first broke through it was seventy, or eighty, or ninety feet. After this freshet washing off that corner, it narrowed down to from thirty to fifty feet.

Q. I understand you could not get a yawl boat through? A. There were some times when we couldn't hardly get through with a yawl boat.

Q. Was there a timber across there? A. I think there was a timber laid across. We walked on from the south pier across to the sand on the north side.

Q. That plank was at the lake shore where you walked across? A. No, sir: it was sometimes. I should think the shore rounded off here about half way up to the south pier, and here was where it was all water [illustrating by the map].

Q. You say in the summer this channel narrowed so it was difficult to get a yawl boat in? A. I think this point [showing] for a spell was so that you couldn't much more than get a yawl boat through to row it.

Q. When you saw them on the sand-bar extending the north pier out at this point where the north shore was so washed away, did the sand extend along out that way towards the mouth of the river [illustrating]? A. No, sir, that was all water there. They drove these piles up in there.

Q. How many feet was washed off in 1834 from the shore as it was in 1833? A. As I stated before, it must have washed off one hundred feet, or probably more, where the north shore is.

Q. So that the lake shore was one hundred feet further west where the north pier is than in '33? A. Yes.

Q. What time do you locate the lake shore two hundred feet east of the angle in the pier, or two hundred feet east of Shapley's pile? A. I should think i was probably in '34.

Q. '34 or '33? A. I should think in 1834.

Q. Did you see it in 1833? A. I saw the lake shore in 1833. The lake shore in 1833 extended some farther than it did in 1834, after the river broke through. It was further east.

Q. How deep was the channel north of the south pier after it rounded off? A. There was a deep channel very near it. It might be ten or twelve feet deep. I think at one time there was a plank across from the south pier to the sand in the channel.

Q. Did you see the water run around west of the north pier in the fall of 1835? A. I think that was in 1834, that it broke around. I think it was in the fall of 1834 that the water broke through the north pier into the river.

Q. When was the breach repaired? A. It was stopped right away after the storm abated.

Q. Did you see a crib put in there in the shape of an L? A. There was no crib—it was only a stick of timber extending from the main pier to the sand. There was no crib, I think, at all. I crossed it frequently. I think it was only a stick of timber we laid over the sand, north across the gap that was washed out. It was all washed out so that the water would set into the river.

Q. If there was a pier put in at right angles to the main north pier, it was at a different place from where you speak of? A. Yes, if there was a pier put in.

Q Don't you remember of testifying on the other trial that it washed out the west end of the pier, so that it settled and had to be leveled up? A. I don't think I stated on the north pier. It was the south pier that was washed out so that it settled. I don't know.

Q. Didn't you say it was on the north pier? A. No, sir, I think I did not. I think I am sure I didn't say so.

Q. You say in 1834 you think it washed in behind the north pier? A. I think there was water came in from the lake shore on the north side of the north pier, but it was stopped in the way I told you. I don't think I was questioned in regard to that before.

Q. How long was that crib across the channel of the old river? A. It might have been eighty, or ninety, or one hundred feet. The whole channel of the river was probably two hundred feet.

Q. You say it washed around the west end of the north pier? A. Yes, sir—only in the fall of '34, from the lake.

Q. How was that washing around? Was the water driven against the pier and around it? A. It extended through. There was a gap nearly the whole length of the pier from where it was put in. There was a space there by excavating sand to put in the timbers. There was quite a space there where the water stood after that storm. It broke through there, and washed that breach behind, may be twenty feet wide, and may be two feet deep.

Q. Did it sink the west end of the pier any? A. I think not. I think I didn't testify so before in regard to the north pier.

Q. What were you doing in the summer of 1835? A. I was in Milwaukee the summer of '35.

Q. Were you here in October, 1835? A. I can't say positive whether I was or not.

Q. Were you in November? A. I can't say. I was here some four, or five, or six times in the summer and fall. I don't know as I could state any one particular time or date.

Q. Can you state that you were in Chicago, on the north pier, before the close of the work, in '35? A. I think I can. I am positive I was here in September, on business.

Q. What business? A. One thing I came for—well, I came here at that time to see a female.

Q. That you remember pretty well, probably? A. Yes, sir.

Q. Wasn't you thinking more of her than of the north pier? A. I think likely enough.

Mr. Fuller.—Wherever the accretion started from, what amount of new made land was formed, at the time you last recollect seeing it in the fall of '35? A. As I stated before, I think it had made probably three hundred or four hundred feet, or probably more.

Mr. F.—That new land was from the west end of the pier, wherever that might have been? A. Yes, sir.

JAMES GRANT, called by the defendants, being duly sworn, was examined in chief by Judge Higgins, and testified as follows:

Q. When did you first come to Chicago? A. In 1834, in the month of April, the 23d or 24th of the month. Mr. Richard Hamilton has a little memorandum which will show the precise time. It was the day after the funeral of his first wife.

Q. Where did you reside? A. The office I had at or about that time—I don't know as I can describe the land-marks as they are now, but I can tell you where they were then: Mr. Thomas Owen, then the Superintendent of Indian Affairs, had a small office of two rooms below, and two above, not more than twelve feet square, on the street running up on the west side of the Lake House, and just opposite to the northwest corner of the Lake House as it stands now. I had my office in the front room of that house for about two years.

Mr. Arnold—Right where Gurdon Hubbard lived afterwards? A. No, sir. Gurdon lived on this side, and I immediately north of the Lake House. You recollect Mr. Owen's house a little to the left of his house? At the door he had an office opposite the Lake House.

Q. How far from that did you board? A. I boarded when I first came, at the Mansion House—this side—for a month or two, and then I stayed in Col. Hamilton's house, on the south side of the street, opposite Mr. Hubbard's, until after he was married again.

Q. Had you occasion to visit the lake shore, the piers, and the improvements? A. I formed the acquaintanae of Lieut. Allen very soon after I came here. He had charge of the work. That acquaintance ripened into friendship; we were very often together. He used to show me his plans and talk about them, and discuss

them. I had read his report to the War Dapartment about his trip to the sources of the Mississippi prior to becoming acquainted with him; and he had a small cabinet of minerals. I had just been educated, and had just commenced life, and I took an interest in those things. All the circumstances conspired to interest me in Lieut. Allen, and I noticed his work. I was then just commencing as a lawyer in Chicago.

Q. Had you occasion to go down on the piers pretty frequently? A. Yes, sir, I visited the lake shore before the piers were commenced, and after they were begun. I should say I was on these piers at least once a week from the time when they were commenced, when the weather was pleasant until I left here. The north pier was easily accessible from the shore, and it was a pleasant walk for the inhabitants of what was then the village. Generally you would see great crowds of people there in the afternoon and evening, and very often both men and boys fishing there, in which I took some delight myself, and I fished too. I fished frequently on that pier, Sometime after I came here, Mr. Arnold and Judge Morris both came here.

Q. How far had the piers progressed when you came? A. I shouldn't say they had progressed much when I came. There had been some crib-work put into the river on the south side, which had been washed around at the time I arrived here. I don't know that I can or ought to state the fact which I read in the newspapers, that it had washed out to the lake. But when I came that was closed, and in the spring, or May, or June following, it washed out again—washed out straight north of what was afterwards the south pier. I came in 1834. I was here when Lieut. Allen put in the first pile on the north side—I think about the last of August, 1834. That was rather an event in the progress of the pier. He had been accumulating his materials and making his contracts and preparations; and the putting in of the pier was regarded by the town as an event in the history of Chicago. It was rather a small town, numbering not over six hundred inhabitants when I came here.

Q. Did you have occasion to observe the general direction of the lake shore? A. I did, sir, when I came here it ran almost in a straight line. The line of the shore was almost straight to the mouth of the river, which was half a mile below the crib-work, but it would diverge a little from a straight line. If you started from a point a little north of what was the harbor, it would diverge a little west.

Q. How was it directly opposite the piers? A. It would be about a direct line. It might have diverged a little; but I think not so far as above. I think it extended further above than it did where it ran out.

Q. How far? A. Enough so for the line of lots to disappear before they struck the line of the pier. I am aware there were

water lots on the river and lake shore. I dare say the man who projected them thought there would be a pier there; but the lines were extended south indefinitely. But it would have struck the pier before it would have struck the edge of the land. Nearly all of them would have struck the line of the pier but perhaps the last one; but the map will tell in relation to that.

Q. If there be a correct survey of it? A. Yes, of course.

Q. You think the line was about north and south? A. Nearly so; the line diverged to the west of a north and south line.

Q. After you passed south? A. Well, it commenced the divergence a little before.

Q. How far north of the south pier? A. Not a great distance. I think the line of Water street would have shown the furthest extent of the shore into the lake.

Q. You think from that it ran about in a direct line south. A. Yes, showing a little divergence west.

Q. Taking the end of the sand-spit the line from there was straight to where North Water street struck the lake?

Objected to as leading.

Q. State how it would run. A. It would run nearly in a south line, diverging a little to the west from that point to the extreme end of the sand-bar.

Q. Were you there at the time of the putting in of the first cribs into the lake on the north shore? A. I was not there. I was in Chicago, and saw the work commenced.

Q. Did you have occasion to go down on the north pier afterwards frequently. A. I did, sir.

Q. Did you observe any accretions forming on the north side after these piers were put in? A. Yes, sir, immediately after you put in a pier, and it would begin to show resistance to the action of the northeast winds, the sand would begin to be deposited on the north line of the pier.

Q. How far, according to your recollection, was the north pier extended into the lake from where they started, in 1834? A. Six or seven hundred feet. I think they started at first as near the shore as they possibly could. It is my idea that it was right at the shore, at the water line.

Q. You think they went as far up as they could go? A. I know that, because you could walk from the shore on to the piers.

Q. How was the land there? How would you remember that point? A. Oh, the land rose—the spit of land rose from the lake shore coming west, and there was a corner in the line of the piers, I think, where the first one was put in. I fix the line of the lake shore at about that point. I can't tell that with direct accuracy, may be not within fifty feet; but I know that the crib was commenced on the east line dividing the land and water on the north

side. I say near that, for you could walk on the first crib. There was probably a timber or a plank lying on the shore.

Q. You say it commenced to form when they commenced building it? A. Yes.

Q. How long did you remain in Chicago? A. I was a permanent resident of the city of Chicago until June 18th, 1838. I then went to what was the territory of Wisconsin when I started. A few days after I got there, the Act separating it from Wisconsin was passed, making it the territory of Iowa. I returned here to the Fall Courts and attended to my business. After Court was over I went to Iowa and spent some time in the Circuit Court, returned to Chicago and remained until the latter part of March. I changed my residence in the June following.

Q. You remained here permanently until 1838? A. Yes.

Q. Did you discover the accretions north of the south pier while you remained here? A. Yes, sir; I couldn't help it well and keep my eyes open.

Q. How far was the pier extended the second year? A. I think about five hundred feet, sir. I think Capt. Allen's calculation was to make it twelve hundred feet; but it had to be built out further in consequence of the sand forming north of it.

Q. You talked with Capt. Allen frequently? A. Yes, sir, it was a frequent subject of conversation. I recollect in the winter of '34–5, he prepared plans of a dredging machine, and I wanted him to explain how it operated, from his plan. We had a great many conversations about it, and he went off to Albany or Louisville to have it built that winter,—superintending the building of the dredging machine to dredge out the spit of land between the two piers for a harbor for vessels.

Q. Were the accretions becoming such as to attract attention? A. Yes. I won't undertake to tell you the number of feet it had grown. I could only give you a guess, for I never measured it; but it was a large accretion. The accretions were large. I should speak of them relatively in this way; that the increase on the north side was much greater and more rapid than the diminution on the south side. I think the largest accretion I observed was in the fall of '35. Then the progress was slower that year than in the year Captain Allen had charge of it, in consequence of there being more wind. If you are not aware of it, I will tell you that they could not set the piers in position when the wind was blowing the waves in. They had to do it in fair weather. There was much more wind the second year, and they made slower progress than during the first year.

Q. Fix the amount of accretion on the pier in 1835, as near as you can judge? A. I can only state in general terms that it increased several hundred feet before I left here in 1838. The increase was large. I could state that with as much certainty as I could speak. But I might not approach within one hundred or

two hundred feet; but I should say it was four hundred feet at least. It might have been six hundred feet. It was so large that it became the subject of conversation before I left here, among the bar. It was talked of, and that there would be a litigation some time or other. I don't know but Judge Morris and myself talked about it.

Judge Morris.—We did, undoubtedly.

COURT.—There were prophets in those days.

Mr. Arnold.—"Coming events cast their shadows before."

Q. You state that in 1835 there were storms, and it had been extended out twelve hundred feet into the lake? A. Yes, sir, by the winter of 1835, I am confident it was twelve hundred feet. Capt Allen's report will show.

Q. How far had the accretion made in 1835? A. My recollection would be, probably in the neighborhood of a couple of hundred feet—two hundred feet. It had increased so much that with any one walking there it would be noticed. It was the subject of common conversation. You could see the sand-spit washing away and the accretion on the north side apparent to the eye. The accretion formed much more rapidly on the north side than it went away on the south side, always, up to the time of my leaving here.

Q. It is now some seventeen hundred feet, on the north side? A. Yes, sir. I haven't been there since the fall of 1843—the fall you saw me here after the death of my wife, Judge Morris. That was the last time I was on the north pier. I might have been on the south pier since, but not on the north side since.

Q. You state that these cribs could only be laid in pleasant weather? A. A storm prevented the work's progress.

Q. What time in 1835 were these storms? They occurred at all seasons, but of course they were more prevalent at a later or earlier part of the season—that is in March or September, than at any other periods of the year.

Cross-Examined by Mr. Arnold.

Q. Your recollection is that the most easterly part of the shore was opposite North Water street? A. Any map of that time would be much more accurate than my memory, if there was an actual survey.

Q. You are familiar with that "Original Survey?" A. Yes, sir, I have seen it frequently; on some occasions I have had it in my possession for months. I was the attorney for the Kinzies.

Q. Probably drew numerous conveyances from it? A. I know I did.

Q. [Presenting a copy.] This is a copy proved to be correct. Does that agree with your recollection of the lake shore? A. I should think that was a fair representation of the appearance of the lake shore when I came here in 1833. Here is where the crib work had been put in and washed out, [pointing.] I recollect

seeing boats and lighters go down around that crib work out of the mouth and load and unload in the schooners standing at anchorage in front of the town. That circumstance makes me positive in my recollection that when I came here there was no opening through the bar for lighters to go out. That was opened in 1834 and closed again. A single storm would close it up. It opened in February, '34, and I came after that, and if it had not been the subject of conversation I wouldn't have known it. It was closed when I came, but from observation at other places—at the mouth of the Little and Old Calumet, I didn't doubt it would close in one storm. I have passed the Calumet when it was difficult fording, and the next day, when we came in the stage it was all filled [with sand.]

Q. You came in April, 1834? A. Yes, it was closed then. It was opened after Capt. Allen commenced his crib. In fact, it opened after I came here. There was another high freshet in the river, and that opened it, but it was generally closed. It didn't remain permanently open until they put in that north pier, which prevented it from filling in again. I think it opened in May or June following, and then closed up before the crib work commenced on the pier, and was not permanently open until they built the north pier.

Q. That was commenced in August? A. I believe so.

Q. Where was the farthest eastern point of Kinzie's Addition? A. The map shows that it would be north of where I say. I won't pretend to say but that that was correct.

Q. As you went south it inclined to the west? A. After you get some distance beyond this line. I have no reason in the world to say my memory is at all different from that map. My memory would be, generally, that it would run in a straight line inclined a little to the west.

Q. As near as you recollect it, it is as represented on this map? A. I dare say. I will state that since I have been here, I have been a surveyor, and I have noticed that surveyors who make maps, frequently make maps that are of no consequence in relation to many points. I know that it is true, because I have been called on to examine the work of other surveyors and they will frequently guess at it, for instance—

Q. Never mind, I simply wished to compare your memory with that map? A. I will state again that the outline of that map is sustained by my memory. There may have been variances and differences, but the shore line of that coast was a general line straight and receding to the west.

Q. [Presenting original map.] A. That's it. This is the one I have spoken of as having been in my possession. I couldn't identify this map, except by saying, this looks like the original map.

Q. Look on the back? A. Oh, this is undoubtedly the map.

If there was any error in that map in reference to the lake shore I didn't notice it. My attention was never called to a comparison between the map and the shore.

Q. There was no discrepancy that you observed? A. No, sir, this map looks as though it had been rubbed, or some part of it.

Q. It has been much used? A. Well, it may have been worn by usage.

Q. If persons were examining it in regard to that point, they would put their fingers upon that point? A. Yes, sir, any map put up for any particular object and examined frequently would show it. I presume it is usage.

Mr. Fuller—Where is that appearance? A. Along the line of the shore. The line of the shore is almost entirely rubbed out, sir.

Q. You spoke of some lots fronting on North Water street, running into the lake before they struck the pier? A. Yes, sir.

Q. Have you any recollection on the subject that will enable you to speak with definiteness? A. There was more than one, I recollect that. I should say there were two or three, may be four, more than one certainly.

Q. I ask if any of these lines would strike the lake before they struck the pier? A. I say I think two or three would.

Q. Suppose that pier extended where it was, would more than one of these lots have struck Lake Michigan? A. Since you have put it on that pier, I don't know that I should swear that any of them would.

Q. I am asking for your memory, taking that map to refresh it? A. I think I have misled you in my answer. I was thinking of their running down on the spit of land. I connected that with the pier itself. I couldn't state that any of them wouldn't strike the pier. I know most of them would. I don't see the pier here.

Q. Here is a faint pencil line for the pier? A. I would have to examine the lots and map to see where that pier started.

Q. Upon this subject you cannot speak? A. No, sir, I cannot. The idea I had in my own mind when I answered, was, that a number of these lots ran out on the lake shore before they ran down on the spit of land.

Q. The shore diverged to the west so that they would run into the water before they came to the mouth of the river? A. Yes.

Q. What is the width of these lots? A. Sixty feet.

Q. About four of them would take up the spit of land when you came down? A. About four or five lots, about two hundred and forty to three hundred feet would occupy the whole of the space at the bend where it commenced to go south.

Q. Was Capt. Allen an accurate man? A. I always regarded him so. I think he enjoyed the reputation at the Department of being one of the best engineers they had in the Topographical corps.

Q. Do you remember of any piles being driven in that first crib? A. I could not say whether the piles were driven in the first pier when it was first put there or not; but piles were driven in there north of the cribs.

Q. Your location of the lake shore is at the angle in the north pier? A. There is an angle. The first pier ws put in on the line of the lake shore, and then the work across the spit was put in afterwards. I think there was a great deal more pains taken in these cribs in the water, and piles were driven, and they were filled with stone; for if there was a storm while they were being constructed, it would bend the piles and throw the pier out of place. That angle or bend in the pier may be in the water inside of the edge of the lake at the corner of the river, instead of the lake shore I may be mistaken about it.

Q. [Presenting Denton's map and Allen's map of 1837.] (Exhibits F. and C.) A. That makes the bend right there at the lake shore. I know the first piers put in were at the dividing line between the water and the shore, or near that.

Q. You remember Shapley's working there? A. Oh, yes, I remember Shapley very well, and Jackson, too. Shapley was head teamster. and Jackson was foreman.

Q. Chris. Burgarber? A. I remember seeing them every day. I saw them hundreds of times. They had a pile driver they run with horses. I could give you a description of the horses. Three of them worked on it. I remember their color, size, and general appearance.

Q. You have a good memory? A. I have for horses. I have a fondness for them.

Q. Do you remember how they drove the piles on the north side? A. They must have driven them with the pile-driver.

Q. Where? A. On the north side, in the lake.

Q. What sort of a pile-driver? A. A pile-driver on a floating scow. I don't recollect of ever seeing any driven except with a pile-driver; but they must had some way of getting piles in there where they couldn't get with the pile-driver.

Q. But they didn't put any across in there? A. You may be correct. They were put in across the river bank. They might have had another pile-driver; but the pile-driver was built after I came here.

Q. You saw the pile-driver on the north side of the pier? A. Yes, on both sides of the pier.

Q. They commenced that pier in August? A. Yes.

Q. That year you saw them drive piles with a floating pile-driver? A. Yes, all along there. I remember the color of the horses; one was a clay, another a dun, and the other a bay.

Judge Morris.—With a bald face? A. Yes.

Q. They crowded that pile-driver as close to the shore as they could? A. Yes, sir.

Q. If you found your recollection differing from the representations of Capt. Allen in regard to the accretions, which would you regard as most reliable?

Objected to.– Objection overruled.

Witness.—If Capt. Allen measured it, I should place implicit confidence on his accuracy; if he merely guessed at it I should place more reliance upon his guess than my own, because that was his business. If he has measured it, the map ought to show his measurements; if he has merely calculated, it was a guess from the eye at the time.

Q. You do not undertake to give the number of feet of accretion in '35 with accuracy? A. I told you I could not. I stated that it might be two hundred feet.

Mr. Wills.—That is, in 1836? No, sir, in 1835, it might have increased two hundred feet more.

Mr. Wills.—Or less? A. I should doubt that; because the increase was rapid and noticeable.

Q. Suppose Capt. Allen's map shows but two hundred feet in four years? A. Unless he had measured it, sir, I should think it was inaccurate. My recollection is, it was more than that.

Q. Do you think with your opportunities of observing the pier, you being a member of the bar, and he an engineer, your observations or his would be most reliable? A. I should think his would be.

Q. How much do you say the quantity was in 1835? A. I have told you I can't be positive; but my opinion is it was out as much as four hundred feet in 1835. I think it was as much as that.

Q. You stated two hundred feet before? A. I stated it might have been two hundred feet the first season—I intended to say so. I said the most rapid increase was at first.

Q. They commenced in August; do you mean it was two hundred feet the first year? My recollection is it was considerable the first year.

Q. You stated, I think, that it was two hundred feet in 1853? A. Well, my recollection is that it was four hundred feet when I left here. It might have been from four hundred to six hundred feet. I can't state with accuracy.

Q. Could you be accurate in regard to increase in 1835, within one hundred feet? A. I don't think I could, sir. If there had been any thing at that time to impress it upon my memory, I might have recollected nearer the amount; but I only recollect that there was a large and rapid increase. I only compare that with the diminution on the south side; and the increase was infinitely more rapid on the north side than the diminution on the south side.

Q. Is not that an extravagant expression, "infinitely?" A. It may be.

Mr. Lincoln.—"Considerable" will do.

Witness.—I will say it was much more rapid. You would notice by the eye that the increase on the north side was more than the diminution on the south in any given time. In six months you could see it.

Q. Do you remember the waters breaking around the west end of the north pier? A. My recollection is indistinct in relation to that. It may have broken through, but if it did it lasted only a day or two. It would have been only the first spring or fall. My memory is indistinct in relation to this.

Q. Have you any recollection of seeing a small pier like an L at right angles to the main pier on the north side? A. I have not, sir. This matter of the north pier, I don't know that I have thought upon it in many years except when I was examined before. I stated that I was out on the south pier, my attention was directed then to the south pier. I might state that I was telegraphed to come here, I didn't know what I was coming for, and I have not sought to refresh my memory.

Direct examination resumed by Judge Higgins.

Q. Your attention has been called to the "Original Map." Look at this map, as it was recorded, to see how that corresponds with your recollection of the lake shore. [Presenting a map.] A. [After comparing the two.] Both of them are alike. I should say the person who surveyed that, hadn't run his line there, [lower part of original.] I couldn't undertake to say which agrees best with my recollection, but, I will tell you a circumstance in relation to this map. This line was the subject of legal discussion as to who was the owner of the increase outside of '35. That was discussed among the lawyers here, and my attention was drawn to it at the time I resided here. I could not undertake to say which of these two was the most accurate map.

Q. You could not state which agrees best with your recollection? A. No, sir, the general outlines of all these correspond with the general outline of the lake; and as I never surveyed it, I couldn't determine which was the most accurate.

Q. Mr. Lincoln.—State an amount which is so small that you are confident it is not too large.

Objected to.

COURT.—If he can state distinctly a certain amount in 1835, let him state it.

Witness.—If your honor please, I don't think I can state. I think the largest increase was in 1835; and when I left here in 1838, I can safely say it was hundreds of feet.

Q. [Presenting Allen's Map.] What was the form of the shore where they put in the pier? A. The south pier was put across

the sand-bar, I understand, in 1833. It was here when I came in the summer of 1833. The river had run out through here.

Q. Do you remember that corner being abraded there? A. My memory is not entirely distinct in relation to that shore line along here. If the water had remained out here any length of time it would abrade that corner there but I don't remember distinctly in relation to it. If the water had been running out continually from February until the time I came here, the corner of the upper edge would have been worn off.

Mr. Arnold.—But if it stopped it would not? A. The action of the water would make it vary a little. There would be little gores cut into it by the action of the waves, but the general shore was this way.

Q. Is that Capt. Allen's signature? [On Allen's Map.] A. If it is not, it is a very good imitation.

Objected to.

Objection withdrawn.

Witness.—You have got about all I know.

Q. Do you know anything about the practice of the department in regard to these maps? A. I know that Captain Allen prepared maps to be sent to the department. This map appears to have been made September, 1836.

Mr. Arnold.—Do you know anything about the map, except what appears on the face of it? A. I do not. So far as Lieut. Allen's was concerned, this map was made in 1836. I don't know what the custom of the department is. I have received maps from the department with marks of the department.

Objected to.

Second cross-examination by Mr. Arnold.

Q. Have you anything to discriminate the accretions of '35 and '36? A. I will tell you why I recollect the fact. I stated the accretions of 1835. I knew the work progressed much more slowly in 1835 than in 1836, from the fact of its being a stormy season. I have read Lieut. Allen's report this morning, and he states what I should have stated, independent of that report.

Q. Do you remember the storms of that season, whether they followed or preceded the first of October, and if so, how much? A. No, sir, I could not. Storms prevailed all season, but more in the fall than in the summer.

Judge Higgins.—The storms, you say, were heaviest in September? A. Yes, sir, September and March.

SAMUEL E. JACKSON, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In the last of August, 1833.

Q. Where from? A. Buffalo, N. Y.

Q. Did you come with your father and his family? A. No

sir, I came with his family, but not with my father. We came by land.

Q. Where did you live? A. We lived in the harbor building, probably two or three hundred feet from where the north pier was put in—that is, the line of the pier.

Q. How old were you? A. Ten years old; eleven years old the day after I came here.

Q. What was your father's business? A. Foreman of the harbor?

Q. Is he living? A. No, sir, he died in 1848.

Q. How long did you live down about the piers? A. We lived there and in its neighborhood until he died, from the time we came here.

Q. How long was your father engaged on the piers? A. As long as the appropriation—until 1840 or 1844. I guess it was the last appropriation. I've forgotten the time.

Q. Did you work with your father on the piers? A. I did after I was old enough. I didn't work on the piers. I was down about the piers while the work was going on.

Q. What did you do? A. I played there. I suppose I was there every day, to the best of my memory.

Q. Were you present when they began work on the north pier? A. Yes, sir, I was there constantly all the time, from the time I first arrived in Chicago, in 1833, until they stopped work. I don't know that there was any days I was not on the pier in good weather.

Q. Who else worked there in '33 or '34 on the north pier? A. Mr. Shapley; Mr. Miller, I think, came in 1834; a man named Birkenbarger, and Chandley. I don't know—there is a good many of them; and I can't tell them all.

Q. How far was the pier out the first season, 1834?

COURT.—I don't think it is worth while to consume time about that.

Q. Tell whether you observed land making north of the pier? A. Yes.

Q. How soon? A. As soon as ever they began to build.

Q. How fast? A. I couldn't state how much. I never measured it.

Q. How much in the course of a year? A. Probably one hundred and fifty feet, but it's only mere guess work after all, for I never measured it—one hundred and fifty or two hundred feet.

Q. Was it likely more or less than one hundred and fifty feet? A. Likely to be more.

Q. How much to October, 1835, two months later? A. I couldn't state definitely as to the amount of feet made. I know there was considerable land made. I never measured the number of feet. I had no criterion to go by, except the lay of the land—no actual measurement. There was considerable, probably twice

as much more by the fall of '35, as in the first place. I stated before there was one hundred and fifty or two hundred feet, perhaps, but I couldn't say. Up to 1835 there was still more—probably as much more.

Q. You don't understand me. I didn't mean the first season but the first year. Did you notice any the first season? A. Yes, sir, in '34 there was accretion from the time there was any obstruction to the sand. Just as soon as a stick was laid down the sand gathered against it. I couldn't say how much there was the first season, definitely, but I suppose from one hundred and fifty to two hundred feet, or perhaps more; and in the season of 1835, as much more as had the year before, if not more. It made faster the second year than it did the first year.

Cross-examined by Mr. Arnold.

Q. What time in '34 did you begin the north pier? A. I couldn't state the time. I should think they commenced getting the timbers ready early in the spring. As for the laying of the crib, I couldn't state definitely the time.

Q. Then how can you tell how much accretion was made? A. The same as I said before, as soon as ever it was laid down it was gathering.

Q. Then if it was laid down earlier, it was more, and if it was later it was less? A. Yes.

Q. You have no definite recollection as to how much it was? A. Nothing only the make of the land. It commenced forming after they commenced.

Q. How much in any one year you don't know? A. No, sir, I did'nt measure it.

Q. If it amounted to two hundred feet in four years, could you divide it up between the years? A. No, sir, it didn't form alike. It formed according to the blows on the lake. In 1835, it was rough all through the summer, and all through the spring especially.

Q. Was that the season the "Queen Charlotte" went ashore? A. I couldn't state. I recollect her going ashore.

Q. You so stated on the other trial, if I am not mistaken? A. If I so stated, it was the best of my judgment at the time. She went ashore on the north pier. I couldn't state what time of the year.

Q. Was it spring or fall? A. I don't know. I have no recollection definitely. My impression is it was spring.

Q. Was that the year of the large increase? A. There was increase that year more than the year before. I don't remember what year it was.

Q. Was there large increase that year? A. Yes, there was.

Q. Was it more or less than the year preceding? A. I couldn't state it as I told you before.

Q. Was it more or less than the year next following? A. No,

sir, there was not so much pier formed. There was no chance for sand to stand there.

Q. You can't tell how much it was from recollection? A. No, sir, I never measured.

Q. You remember the water's rising in 1835 so that it went over the top of the north pier, so that you couldn't go on it? A Yes, sir; that was when the schooner "Charlotte" went ashore, and for that matter it was so several times before and after.

Q. Did it entirely wash over? A. Yes, the sea ran over.

Q Did the sea, when it run over, discharge itself into the river across from the top? A. Yes, sir.

Q Did it form a current around the west end of the north pier? A. I don't understand you. If you mean up by Mr. Kinzie's warehouse, it certainly did not. That was the west end of the pier.

Q. But on the lake shore where you commenced the first crib? A. Yes, there was a gap there made by the action of the sea.

Q. Was that the time the "Queen Charlotte" went ashore? A. Yes, sir, I think it was, to the best of my judgment.

Q. How much did it go through? A. I couldn't tell the number of feet any more than the number of sand.

Q. Was it a deep hole? A. Yes, it was a pretty deep hole. I don't know how wide—enough for one crib thirty feet. I couldn't state that definitely. That is the general length of them, thirty feet long and twenty-four feet wide.

Q. Are you sure? A. Yes; some were longer and a great many shorter. That is the general average of the cribs—thirty feet by twenty-four.

Q. Do you remember what this "Charlotte" was loaded with? A. Merchandize.

Q. Apples? A. Yes.

Q. Don't you remember their going into the river and your going in there and getting some of them? A. Yes.

Q. She had some furniture? A. Yes, household furniture.

Q. Then it was fall when she was coming in? A. Yes, sir; as to that it is a good while ago, and I don't remember.

Q. It could not have been '36? A. I don't think it was 1836.

Q. You think it was '35? A. Yes. I wouldn't be definite about that. I don't know.

Q. You stated on your former trial it was '35. That is your present recollection? A. Yes.

Q. How did these apples get into the river? A. Floated in from the sea.

Q. Through that channel? A. Yes, or over the pier, either one.

Q. Did you get some of them? A. Yes, sir, in the river.

Q. Water washed over that pier both before that and after?

A. Yes, sir, we had hard work to get out to it sometimes. We had a beacon light out there, and couldn't get to it sometimes.

Q. Where did the "Queen Charlotte" lay? A. I could tell if I was there.

Q. How far from where the pier was begun? A. That would be merely a guess—probably six hundred or seven hundred feet.

Q From there these things drifted and went over into the river? A. Yes, sir.

Q. As the water came down against the north pier, it set in in an eddy up towards the west and passed through that gully? A. Yes.

Q. Do you know when they repaired that breach or gully? A. I don't.

Q. Do you know in what way? A. By filling it with timber.

Q. Did you make an L? A. There was no L; but from the straight pier there was the pier timbers out some three or four feet, running parallel with the others.

Q. You remember the water coming in behind? A. Yes.

Q. Don't you remember your putting in a small crib to fill it up? A. No, sir; there was a line of timber run right along here north of it, extending some three or four feet.

Q. How far into the lake? A. I don't know. I think probably the length of about two or three cribs, may be four—I can't tell.

Q. Were these put in after that storm cut through, to fill up the gully? A. It was made to protect the water from coming down here. There was a swale down here, and it was to prevent the water from coming through there.

Q. What was the position of the swale? A. North and south, coming from the hills up where Lill's brewery stands. It bore along nearly parallel with the shore. It was out at this point [illustrating by the map], and the lake shore run in this form, and the piers come through here. That swale started up in some sand hills, just south of Lill's brewery, and over here was a large swale and deep water. I have been in swimming there. Down here it was small, sometimes nothing. This deep place was just this side of Lill's brewery. It's only half a mile up to his brewery. In dry weather, and when there is no storms, there was a basin in there. In storms this basin was filled up. This embankment was put in to keep the sea from that.

Q. At the time of these storms in 1835, the water beat from the lake shore over? A. Yes, it run all over.

Q From the lake shore clear up to the west end over into the river? A. Yes, and a good ways beyond this.

Q. How old were you in 1835? A. I came here in 1833, and I was eleven years old the day after I got here.

Q. You played around there, amusing yourself, riding the

horses, &c.? A. Yes, I suppose so. I didn't work on the work until I was sixteen years old.

Q. You stated on the other trial, that during that summer the beach was changing with every storm? A. Yes, it was changing just as it is now.

Q. Was anything done on the north pier in 1835? A. I can't tell you how much.

Q. You state in the other trial that nothing material was done on the north pier in 1835? A. I think that's a mistake of the printer. I remember they finished up the work of the year before, and then went to work laying out cribs. They laid out cribs for the new work as far as the weather would permit, and when it was unsuitable to work outside, they filled up the old work. They finished up all the work of the year previous by bringing it up to this height and filling it.

Q. There was a crib in this place where it broke through? A. Yes.

Q. That was where the first crib was put in? A. Yes, sir, from the river shore.

Q. That's your idea. How near Shapley's pile was that? A. I don't know anything about Shapley's pile. I didn't know he had any.

Mr. Fuller—Speaking of the sea's breaking over there, have they continued ever since in high storms to break over all that country? A. Yes, sir. I saw them last fall higher than it was in 1835, I saw it at Sand street last fall.

LEONARD C. HUGUNIN, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In August, '33. Within a month of that time I returned to New York. I returned in about thirteen or fourteen months afterwards, November 17th, 1834. I arrived here with a vessel. I was on board the schooner "Jefferson."

Q. Where did you enter the harbor? A. I didn't enter the harbor—I came alongside the north pier.

Q. How far out was the north pier built then? A. I don't know how far out it was, but from other testimony, and from Lieut. Allen's Report—

Q. State your best recollection? A. I should think perhaps six hundred feet, to give a rough guess. It might be more or less.

Q. Did you remain after November, 1834? A. I remained here until January, and then returned to New York, and returned here again about March 1st, 1835. I was here at the election.

Q. Were you here in the summer of '35? A. I was here most of the summer. I had a farm or claim on the Aux Plaines

river, and spent some time out there, but was here about twice a week.

Q. From November, 1834, was your attention called to the making of land on the north side of the north pier? A. Yes.

Q. What did you observe take place? A. The sand was accumulating very rapidly to the north of the north pier. I think I have seen the beach increase two or three rods during a gale of wind of two or three days.

Q. How much the next year? A. It increased the next year, and as it seemed to me very rapidly—more rapidly than the following year, because the water was shallower, and the sand necessarily didn't have to back up so much to the northward.

Q. Where did it fill up the fastest? I can't locate any particular spot.

Q. At which end? A. At the west end, next the old shore.

Q. How much had it made there November 17th, 1834? A. I couldn't tell.

Q. Give us your best recollection? A. I think four hundred feet at least for the two years, '34 and '35.

Q. I asked for November 17th, 1834. Did you observe the accretion after being away a year or more? A. Certainly.

Q. How much was made then? A. I don't know. Perhaps two hundred or three hundred feet in the angle to the northward of the pier.

Cross-examined by Mr. Arnold.

Q. You returned November 17th, '34—there had been no pier put in before? A. No, sir, there was material on the beach. No pier had been sunk. I don't remember it, if it was there. I know I hauled my vessel over the bar at the mouth, and came up in August, '33. The river hadn't come out opposite the fort.

Q. Hadn't the pier began? A. No, sir, I am quite sure it hadn't begun. It began in my absence. I was absent that winter and summer. When I came back they had commenced the north pier, and the river was running out just at the south pier.

Q. Can you tell how much the accretion was in any one year? A. I can't state positively, of course not.

Q. Might you not vary one hundred or two hundred feet in any one year? A. Yes, sir.

Q. It is mere matter of conjecture? A. Not exactly. I made my vessel fast with chain cables. We had a stormy night, and the chains cut into the spiles and injured them very much, and there was a mark that remained for years, where my vessel had chafed, and that was a land-mark, or rather a water-mark, for years afterwards.

Q. That was on the inside of the pier? A. Yes, sir. She lay there all night, and it was a very uncomfortable night for a vessel.

Q. Do you remember passing over on the north shore—from the pier? A. Certainly. I used to go from the vessel.

Q. But you went out on the pier to your vessel? A. Certainly.

Q. Do you remember a particular storm in 1835, when the Queen Charlotte went ashore? A. Yes, I think I do. I guess it was in the fall of '35. The schooner Van Buren and the schooner Celeste went ashore in the fall of '35.

Q. Were you here at the time when the Queen Charlotte went ashore? A. I don't remember. I remember hearing of it at the time.

Q. Have you seen the water pour over that north pier, behind the west end of it in '35? A. No, sir, I don't remember it. I have heard other witnesses speak of it. I don't remember that I have noticed the water run over the pier. I have the impression it went through in a gale of wind.

Q. Have you an impression that you saw it? A. No, sir. It's only what I heard—that it cut a passage.

Q. You never made any measurements of the accretion? A. No, sir, but I am a pretty close observer. I had an interest in the harbor and in the town. I felt a lively interest in getting—

Q. Who first talked to you about this case? A. Mr. Jones.

Q. When? A. About eight days ago. He met me on the side-walk, and talked with me about one minute or a minute and a half.

Q. Or two minutes? A. Not two. He asked me one or two questions. I am a pretty close observer. I watched the drifting of sand on this coast a great deal.

Q. Who else has talked with you about the case? A. I have not spent three minutes with any one. I had some talk with this gentleman, one of the counsel, Mr. Fuller, in my brother Hiram's office.

Q. Is he also a witness? A. I don't know.

Q. Who was present? A. No one else.

Q. When was that? A. Three days ago, I guess.

Q. The conversation with him and Mr. Jones is all you have had with any one connected with the case? A. I believe it is. I don't remember talking with anybody. I never heard of this case until the conversation I had with Mr. Jones.

Q. Any talk with Mr. Higgins? A. No, sir.

Q. No other counsel? A. No, sir.

HENRY C. WEST, called by the defendants, being duly sworn was examined by Mr. Fuller, and testified as follows:

Q. When did you first come to Chicago? A. June 8th, 1833.

Q. How long did you remain? A. I remained here until January, and then went east, and returned July 1st, 1834, and remained until July 20th, 1835. I went from here to Milwaukee, and have resided there ever since.

Q. What was your business here from July, 1834, until July,

1835? A. I was doing some work—some carpenter work, mostly for myself.

Q. Were you on the piers during that time? A. I was there almost every day.

Q. What called you down there? A. I boarded on the north side, and it was a considerable ways to my boarding-place. I had a curiosity to see the work progress, and often went that way to my boarding-place. I went down by the fort and crossed over, sometimes on benches and sometimes in a skiff belonging to the Garrison.

Q. Did you ever go down to show visitors and strangers the improvements? A. Yes, I went down there frequently with strangers and acquaintances from the East.

Q. What did you observe about the making of land north of the pier? A. I observed that it made rapidly after the pier went out in the fall of '34 and spring of '35.

Q. Do you recollect going down there with any gentlemen in the spring of '35? A. I went down there at the time of the land sales with two or three gentlemen, and to other places over the city. That I think was in May or June, 1835.

Q. How much had made then? A. I think about two hundred feet from the old shore line. That was June, '35.

Q. What motive had you in observing it? A. No other motive except, as a citizen of Chicago, I felt an interest in the improvement of the place, and when folks came here I showed them all I could, and all I knew about the place. There was a question whether we could have a good harbor. I went down there with folks that wanted to see the city. My boarding-place was very near the Lake House, on the corner diagonally from where the Lake House is now.

Q. You think about two hundred feet had made in June, 1835. A. I think so.

Q. Did you return that season from Milwaukee? A. I returned again in October, 1835, by land.

Q. Did you go down upon the work then? A. Yes, sir, I went out by water. We went down and got on. I don't remember whether it was on the north or the south pier that we got on. We went in a yawl boat. Our vessel was lying outside.

Q. When you returned in October, did you observe any increase from the time you left? A. Yes, sir, there was some increase, I can't state how much. I was there every year afterwards, and I noticed the increase from year to year, and the decrease on the south spit.

Q. Which went on the most rapidly, the decrease on the south, or the increase on the north? A. The increase on the north for the first two or three years, and then the decrease on the south. If I remember it right, the south spit decreased; in about two years it disappeared, after it commenced going rapidly. It disappeared, I think, in 1838 or 1839.

Q. Do you recollect the weather in the season of 1835? A. No, sir, not until late. It was very stormy after the 15th of November; before that I don't know much about the season.

Cross-examined by Mr. Arnold.

Q. Why don't you remember before the 15th, as well as after? A. I was out in a storm about the 15th, and vessels that left here remember the 15th or 18th.

Q. What were you doing that summer? A. I was about four miles back of Milwaukee. I was not here from the 20th of July until the last of October or the first of November.

Q. You have no recollection of what the weather was? A. No, sir, not particularly. It was a cold season.

Q. In '34, after July 1st, you worked here? A. From that time until I left. I didn't work much after the first of May, '35, but I was around here. The Chicago folks were getting rich doing nothing, and I was like the rest, trying to get rich.

Q. Where did you work in 1834? A. I put up a house on the corner of Madison and ——— streets.

Q. That's when you boarded on the south side? A. I boarded on the north side. In '33 I boarded on the north side.

Q. When did you cross the river on benches frequently? A. It was the summer of '34, frequently; I can't tell the time. It was after I came, the first of July. They had benches across for the convenience of the hands. I don't know what sort of benches; I believe they were four-legged benches, with plank. The water wasn't so deep but they would go—they would span across at times.

Q. What was the condition of the lake shore to the north, at that time? A. The lake shore hadn't altered much from 1833 until they put the pier through

Q. You didn't observe any change until the north pier was put in? A. No, sir. The channel was cut across, but it hadn't altered to the north. It was widened where it went out. The north pier was a little rounded off.

Q. How much? A. It would be all guess-work. My attention was not called to that as much as to the accretion. I came in on the 1st of July. I couldn't form any opinion how much had worn off.

Q. Was it five hundred feet? A. No.

Q. Was it fifty? A. It might have been fifty. I don't like to swear by guess about such things as that.

Q. Has your attention been called to the accretion? A. Yes.

Q. Who by? A. By myself. I took gentlemen down there.

Q. But lately, who talked with you? A. I don't know. Mr. Sweet spoke to me.

Q. When? A. In this house, within the week.

Q. When before that? A. In Milwaukee he spoke about it some weeks ago, perhaps.

Q. When before that? A. I don't know. We might have had a conversation up there.

Q. You have been here to testify before? A. Not about the accretion.

Q. About the harbor? A. Yes, in this same suit, I was twice here before.

Q. Wasn't you one of the men Mr. Sweet took Mr. Fuller to? A. No, sir, I never saw Mr. Fuller until I saw him here. I have spoken with him and others here twice.

Q. Where? A. Once in a building on this street.

Q. In whose office? A. Mr. Walker's name was on the sign.

Q. Walker and Van Arman, over in Portland Block? A. I don't know. It was Walker, and I guess Van Arman.

Q. There you met Mr. Fuller first? A. Yes.

Q. Where next? A. In one of these buildings they are raising.

Mr. Fuller.—At my office.

Mr. Lincoln.—I believe I was there.

Witness.—I don't remember. I was there with Mr. Lincoln—down there where they are raising the buildings. Mr. Lincoln was there, and some other gentlemen, and they—

Q. Please to answer my questions, and then stop? A. I will try to answer all the questions as well as I can.

Q. All this time you have been trying to fix the accretion? A. No, sir, I think I formed my mind before I came here.

Q. When you talked with Sweet? A. Before that.

Q. Did you think of it up in Wisconsin? A. Yes, sir, often after I left here in '35—

Q. Before Sweet spoke to you? A. Often, hundreds of times.

Q. Do you remember any time? A. Not that I could make you understand the time. I don't remember the particular time. I have often spoke to the folks about it.

Q. Did you ever measure it? A. Yes, I did once. I believe some ten or twelve years ago. I don't remember the year. I remember pacing it.

Q. Was it since this suit? A. Before that.

Q. Can you tell when you go down to the pier where the old lake shore was? A. I don't think I could.

Q. Could you within a hundred feet? A. I don't think I could.

Q. Could you tell how far it was from the ends in any one particular year? A. No, sir, not by any land-marks there.

Q. Have you any idea where the lake shore was, by reference to the north pier? A. Yes, sir, my impressions have been the same. The lake shore was some two hundred feet east of one angle.

Q. When you say the accretion in that year was two hundred feet,

you start from that point? A. No, sir. I start from the shore, and I get the shore without reference to the pier whatever.

Q. When you estimate the extent of the accretion you have a starting point? A. I did have one.

Q. It was where the old shore was? A. Yes.

Q. If that was two hundred feet east of the angle, the accretion was two hundred feet east of that, or four hundred feet from the angle? A. No, sir, I didn't take my bearing from the angle in the pier, but from objects north and south of the lake shore.

Q. You don't pretend to take your bearing from the pier itself? A. No, sir, there might have been some mark on the pier, probably there was, but I don't remember whether I took notice.

Q. What were these objects? A. The general course of the shore, the objects there, the sand-hills, the bushes, the sand-spit, the buildings on the sand-spit, and all there was south of that.

Court took a recess of twenty minutes.

LUTHER NICHOLS, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In June, 1832.

Q. What was your business? A. I soldiered one year.

Q. What? A I was a soldier one year in the United States army, in the Black Hawk war. I left Chicago in '33, in the spring, and returned the last of April, or the first of May, 1834.

Q. How did you come here in April, 1834? A. In a vessel, a schooner. She landed at the south pier.

Q. How long did you remain then? A. Until the present time.

Q. What was your business in the summer of '34 and '35? A. I had a horse and cart and drew water all over the city.

Q. Not quite so far as you have to now? A. No, sir.

Q. Were you down about the north pier and harbor works? A. I was frequently. In '34 I lived in the old Kinzie building, part of it. It was nearly two hundred feet west of the north pier, probably.

Q. Did you observe any growth of land north of the north pier? A. I observed it very nearly as the pier was built.

Q. How much, in your opinion, did it make in that season of 1834, the first year? A. So far as measurements are concerned I never measured. I passed over it several times, and if the report of Captain Allen is true about the pier, I should lay it higher than almost anybody else. I should put it some two hundred or three hundred feet in the season of '34.

Q. How much thirteen or fourteen months after the north pier was put in? A. I was not there in the latter part of 1835. It would be guess-work for me to guess the number of feet.

Q. Give us the best of your judgment as to the distance you are sure it had filled out, up to the time you last observed it in

1835? A. Well, sir, I should think it would be five hundred feet, probably.

Q. Has the land thus made out remained ever since? A. I think it has.

Q. Does the sea occasionally break over all that country now? A. Well, I have not been over there in a number of years, but I know that always since I have seen it, when there was a blow it went over. In '34 it went over pretty strong.

Q. Is there any circumstance that called the accretion to your attention? A. I was driving over it daily, taking water from the lake, in 1834, off north of the pier. There was no north pier there in the spring of 1834. I remember drawing water from the lake there in the fall of 1834, and some in 1835, in the spring. I got the water out of the lake and some in a spring, in a place where a barrel was put in by the Kinzie House. It was just about on Water street.

Q. In 1835 did you observe the growth eastward? A. I observed that I had to go further into the lake to get my water.

Q. How was the weather that spring and the winter of '34–5. and the summer of '35? A. It was pretty hard weather in '35; some pretty hard blows, some vessels went ashore. I couldn't recollect any vessels, but from hearing some witnesses speaking about it. I recollect about the barrels of apples coming ashore, and I helped draw some of them away. But I couldn't say what vessels of my own knowledge.

Q. Has your attention been called to other accretions on the lake? A. Only up north.

Q. In what place? A. Well, I kept following it up all the way north as far as I could see.

Cross-Examined by Judge Morris.

Q. What vessel was that which brought the apples? A. I couldn't say any more than what the witnesses swear to about it. I recollect the apples being there on the beach.

Q. Was it the "Queen Charlotte?" A. I think it was. She was a pretty large vessel—a ship. I don't know how much she drew. I think some ten or fifteen feet.

Q. Do you remember how near the angle of the pier she came? A. I don't. I remember they were piled up on the beach there.

Q. Didn't the vessel come pretty close in shore? A. Yes, sir, so her stuff floated over the pier.

Q. You say it increased how far the first year? A. I should say between two and three hundred feet. It didn't begin to fill out until towards the fall of '34, when they began to lay the pier. It filled up almost as fast as they laid the pier down. In the fall there was quite a run-a-round where the water run around.

Q. How much was put down that fall? A. I don't know.

Q. Do you mean it was filled up the instant the pier was built?

A. No, sir, there was quite a hole there when the water came around.

Q. How much had it filled up? A. I don't know—between two and three hundred feet. I never measured it. I could put it three hundred feet in the fall and winter of '34.

Q. How much in 1835? A. I don't know, I never measured it. In the spring it kept making out east as they put out the pier.

Q. How much did it make by November 1835? A. I should think as much as 600 feet.

Q. No more? A. I don't know.

Q. Do you mean this in addition to the two hundred odd feet of the first year? A. No, sir, three hundred feet more. I mean it would increase three hundred feet for '34, and the same for '35.

Q. Don't you locate the Chicago river at the angle? A. So far as where they commenced the pier, that was near the lake shore at that time.

Q. Didn't you say on your former examination that the river bank was at the angle of the pier? A. I think not. The east bank of the river was where the south pier was.

Q. Did they commence the angle of the north pier at the river? A. No, sir, they commenced it at the lake shore.

Q. Don't you locate the east bank of the river at the angle of the south pier? A. Very nearly so, sir.

Q. Didn't you locate it at the angle of the north pier? A. No, sir, there was a small pier between, from the river to the lake where the river came around.

Q. Where was that angle in the north pier from the lake shore. A. Not far. I couldn't say how far. I couldn't say the angle. I could say, where they commenced the pier was on the lake shore.

Q. But where was the lake shore? A. I couldn't tell you.

Q. Where did you say on the last trial? A. I don't recollect. It was a very little ways from where the river turned to go down.

Q. How wide was it there? A. Sometimes it was as wide as from here to the other wall [of the Court-room,] and sometimes not. Some blows would blow it up, and some not. I have seen it where it was not over twenty feet.

Q. Before the piers were built? A. Yes, I saw it in 1832, where two wagons would barely pass. It would either gully it out, or wash it away. You could hardly ever catch that open all of one width.

Q. Then there was a considerable curve there? A. Yes, in the sand-bar. There was in 1832, where the river came down to run south. That's where the harbor is. Right at the point of the island, of the sand-bar, on the south side, up there, before the river went through straight, you could drive a team around—

sometimes it was smaller and at other times larger. The sand would wash away. There was a considerable curve there then in the river.

Q. In the lake too? A. Not so much. The sand-bar wasn't exactly straight. Sometimes the river would take out sand and make it narrow. The current of the river would alter that sand-bar.

Q. How wide is the river at the bend? A. A hundred yards —sometimes less than that. I don't know how wide it was when they commenced. In 1832, it was over one hundred yards wide there sometimes.

Q. How wide was the sand-bar generally at that point? A. I have seen it one hundred and fifty feet, and sometimes as I said before, it was not ten feet.

Q. Didn't you swear on the former trial that it was at least three hundred feet across that bar at all times? A. No, sir, I did not. I swore from a certain point—where the flag-staff stood, not far from the Garrison, across, it was just one hundred yards, because to the sand-bar, that crossed the slough - the slough was pretty near that width—nearly half the width of the river, three hundred feet was to where we used to shoot our target on the west bank of sand-bar. The flag-staff stood south of the Garrison and a little back—as far back as the Fort, I think.

Q. Didn't you state on your former examination that the marsh was two hundred and fifty to three hundred feet wide? A. No, sir, that was the river and marsh.

Q. Mr. Clapp, who took down your testimony, says it was two hundred and fifty to three hundred feet? A. That was a mistake.

Q. You measured one hundred yards for a target? A. Yes. It was on the sand bar. It was three hundred feet to this flag-staff. The slough and the river were one hundred yards.

Q. If the river was one hundred yards, and the slough was one hundred yards, it would be two hundred yards?

Mr. Lincoln—Unless one was on the top of the other.

WITNESS—No, sir, it is one hundred yards.

Q. You say the slough was one hundred yards? A. No, sir, I never said so.

Q. Where do you make the angle in either of the piers? A. I don't know.

Q. Where was the angle in the south pier? A. I don't know.

Q. Where was that from the lake shore? A. I have told you two or three times. It was where the river came down and made the turn.

Q. Sometimes it was a great deal wider than at other times, then the jog was in here? A. No, sir.

Q. Didn't you swear so? A. No, sir, I don't know where it was. I swore where they set the crib.

Q. You have stated that the angle is just beyond where they

crossed the bed of the river? A. If that was the bed of the river, and I say so now.

Q. Was it the bed of the river? A. I couldn't say. I know when I came here in '34, I landed on the end of the south pier, and had to come across where I supposed the old river was.

Q. Was there where the jog was? A. No, sir, I didn't know there was any jog, but where the river passed under some timber they had laid across for us to cross on, that was on the west side of the bar. I landed on the pier or bar. I think the pier run a little beyond the river, where there was some cribs put down.

Q. Were any cribs put clear across the sand bar? A. I think so.

Q. Which end of that cribbing did you get off at? A. The east end. It was in the lake at that time. We sometimes called it river, but if the river ran out into the lake at that time, there was a sand bar there.

Q. Which side of that sand bar did you get off? A. I couldn't tell you.

Q. Was it the east or west side of the sand bar? A The vessels came right up to the pier, and I got right on the pier. I don't know where the sand bar was at the time, but I know where the river ran.

Q. If you can't tell where the sand bar was, how can you tell where the north pier was? A. Because I had occasion to observe it, and I never was on the other one.

Q. The whole of your testimony before was about the south pier, and nothing about the north pier? A. I don't know as they asked me.

Q. Did you testify at all about the north pier? A. I think they asked me about the slough on the north side. I don't call it the slough. It was a wet place where the water came across in high winds. It flowed over into a low piece of ground by the Lake House.

Q. Where did it go to then? A. Nowhere. It sucked up, I guess. It didn't run out anywhere to my knowledge.

Q. Did you ever measure the accretions? A. I never did any more than by traveling over it.

Q. Isn't it mere guess work? A. It is mere guess-work in one sense, although I travelled over it a good many times. If you traveled to your house a great many times you could tell how much it was without measuring.

Q. Where did you get water? A. At the lake. We didn't used to go a great ways north of the pier to get water.

Q. How much had it increased in North Water street in '35? A. I couldn't tell you. As I told you before, I could not tell you the number of feet. I think it increased almost as fast as the pier went out.

Q. Up to North Water street? A. I think so. I recollect the sand piling clear over the crib-work.

Q. Is the crib-work on North Water street? A. I don't know, sir.

Q. Do you know where it is? A. I know where it used to be. I traveled up from that then.

Q. You don't know where the sand was? A. No, sir. I never surveyed it. I only traveled over the accretions. I don't know where North Water street was exactly. I might guess at it. That's all I know about it.

Q. Mr. Fuller—Was the accretion the subject of conversation and remark by you during the year '34 and '35? A. I don't know. I don't recollect. I might have spoken about it a hundred times.

Mr. Fuller—Your attention was called merely by traveling over it and drawing water? A. That's all, sir.

EZEKIEL MORRISON, called by the defendants, being duly sworn, was examined by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. August 10th, 1833. I have lived here in the city ever since.

Q. What was your business? A. I went on the harbor the first work I done. I worked on the pile-driver and scows, and sinking piers.

Q. Did you work on the north pier? A. Yes, sir, I helped put in the first crib that was put in there. I commenced working in August, 1833, and quit work in July, 1834.

Q. Did you commence on the north pier in '33? A. We commenced on the north pier in '34, and I worked there, I should judge, about two months, and that fall and winter I went to work up in town. I could do better than I could there, and I quit work there. In '35 I didn't work on the harbor. I worked at getting out timber out of the woods in the winter of '35.

Q. Did you do any work on the pier in the summer of '35 on the harbor? A. No, sir, not any.

Q. Were you down there in the season of '35? A. I used to be backwards and forwards very often.

Q. What took you down there? A. My acquaintance with the men at work there. I was acquainted with Mr. Jackson before I came to Chicago. I was to work in 1835 in the woods. I drove team getting out timber.

Q. Did you observe any growth of land north of the north pier after it was built? A. Yes, sir, it commenced making right away, pretty soon after the cribs were put it. It was most rapid when it was a storm from the northeast.

Q. Did you observe it in '35? A. Yes, sir, I noticed it. I was backwards and forwards then. I had seen it making out in Buffalo.

Q. Had you any interest in that to call your attention to it? A. I hadn't interest or anything, only just merely to notice the thing as I saw it while I was there.

Q How much did it grow within a year of its commencement? Take your own time and language, and describe its operation to the jury. A. Well, sir, I think in the spring of 1835, there was two hundred and fifty feet: there might have been three hundred feet made out from where the pier was first put in on the lake shore, from the west end of the pier. It made very fast in '35. They raised the top of the pier, and it accumulated in '35—that is it made a bigger show than before. I think the weather in '35 was rather rough—a good deal of rough weather.

Q. How far do you think it had made by October or November, 1835? A. I should judge it was about three hundred feet. It might have been more. I presume it might have been more. Well, say about three hundred feet.

Cross-examined by Judge Morris.

Q. You say it had made three hundred feet by the spring of 1835? A. Yes.

Q. How much had it made by the fall of 1835? A. I couldn't say positive, but it's my opinion it must have made out some four hundred feet.

Q. Do you know where the angle in the north pier is? A. I know where there is an angle.

Q. How far was the lake shore from that angle? A. The lake shore probably from that angle might have been three hundred feet. At the time we commenced the pier, it was not so far. The wind and water had washed off the corner, so that the pier commenced in about forty or fifty feet—may be seventy-five feet. It had washed off the corner, so that we commenced up at the same place the lake came up.

Q. At the point where you commenced, had the lake shore dimished. A. Why, it was washed off there from the original lake shore.

Q. Do you know that it had washed off at that point? A. Yes, I know it, because I was out when it first opened in the spring of 1834.

Q. Were there not several storms that year? A. Yes.

Q. Didn't the sand wash out and wash back again, and fill up the mouth of that channel? A. It never washed back entirely.

Q. Didn't it wash back and fill up the channel? I don't think it did.

Q. Was the old lake shore still there where the first crib was put down? A. My recollection about that is, if you are coming to right where we put the first crib, there was a space there, and there was some water that washed around the end of the crib, and Mr. Jackson went and got a stick thirty or forty feet long, and put it on the end of the pier, and run it on the shore, and then

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put down plank end ways, and put some stone in there. That stopped it, and I never saw anything come through after that.

Q. How much did it wash out after that? A. It didn't wash out but very little.

Q. Is that the way you described it in your testimony before? A. I don't know that I described it at all.

Q. Didn't you describe the water washing around the first crib? A. No, sir, I don't think I did. I say now, the water did wash around the end of the pier. It was when the pier was put in.

Q. The pier or crib? A. Well, the crib, if you are a mind to have it so. You may call it "pier" or "crib."

Q. How many cribs had you put in when it washed around? A. May be four or five, or six.

Q. Was it not four hundred or five hundred feet out into the lake when that blow came? A. No, sir.

Q. You didn't testify at the other trial that it was four hundred or five hundred feet out? A. No, sir. I might have testified that the crib was run out that season probably six hundred feet.

Q. Didn't you say at the time of that blow? A. I think not.

Q. Didn't you have to put in new cribs there to prevent the water washing out sand under the crib? A. No, sir.

Q. Didn't you so testify on the former trial? A. No, sir.

Q. You are sure? A. I say we put in cribs from the end of this running place I swore to as the slough.

Q. Didn't you swear that where the water run around it washed out twenty feet? A. No, sir.

Q. You are sure of that? A. Yes, I am pretty confident I swore to no such thing.

Q. You say the lake shore from the angle was some four hundred feet east? A. Yes, sir.

Q. If there had been one hundred feet washed off it would have been four hundred feet east of the angle? A. No, sir; it would have been four hundred feet to the lake shore. It might have been two hundred and twenty feet from where the angle was up to where we commenced. That was this side of where the old lake shore was—probably fifty, sixty, or seventy-five feet. That's what I swore to.

Q. The accretion you put on east of that four hundred feet? A. The accretion in the fall of 1835 I put at four hundred feet, at least, beyond where the pier was put in—from the west line where the pier was put in.

Q. Did you say "we drove piles west in '34 in the summer and fall, after it washed out by a heavy gale round the west end of the pier twenty feet?" A. What pier?

Q. The north pier. Is that according to your recollection? A. No, sir.

Q. "It washed out some twenty feet; this was before we put

Q. Had you any interest in that to call your attention to it? A. I hadn't interest or anything, only just merely to notice the thing as I saw it while I was there.

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Q. You say it had made three hundred feet by the spring of 1835? A. Yes.

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Q. Do you know where the angle in the north pier is? A. I know where there is an angle.

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Q. Do you know that it had washed off at that point? A. Yes, I know it, because I was out when it first opened in the spring of 1834.

Q. Were there not several storms that year? A. Yes.

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Q. How many cribs had you put in when it washed around? A. May be four or five, or six.

Q. Was it not four hundred or five hundred feet out into the lake when that blow came? A. No, sir.

Q. You didn't testify at the other trial that it was four hundred or five hundred feet out? A. No, sir. I might have testified that the crib was run out that season probably six hundred feet.

Q. Didn't you say at the time of that blow? A. I think not.

Q. Didn't you have to put in new cribs there to prevent the water washing out sand under the crib? A. No, sir.

Q. Didn't you so testify on the former trial? A. No, sir.

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Q. Did you say "we drove piles west in '34 in the summer and fall, after it washed out by a heavy gale round the west end of the pier twenty feet?" A. What pier?

Q. The north pier. Is that according to your recollection? A. No, sir.

Q. "It washed out some twenty feet; this was before we put

the spiles as above." Do you recollect that? A. No, sir, I don't recollect that.

Q. That the channel was four or five feet deep? A. That was the slough, sir. That slough was about four or five feet deep. That laid between here and the lake shore.

Q. Is that the slough Mr. Nichols speaks of? Did it come down pretty nigh there or break through the pier? A. It come down pretty nigh there.

Q. How far was that from Kinzie's warehouse? A. It's down this way—down towards the bend of the river, and a little towards the lake.

Q. Did it run into the old channel? A. No, sir, into the harbor, not into the channel. I never saw it run into the old channel. It run into the new cut channel, across the pier.

Q. You are positive of that? A. Yes, there was a space upon the shore that the water run in at the time. There was timbers put in there, where we commenced on the lake shore. That was in 1834.

Q. Was there any piers made there across the sand-bar in '34 at all. A. I think there was.

Q. Are you positive of that? A. That is my judgment. I am as positive of that as of most anything else.

Q. If you are mistaken in that, you may be mistaken in a great many other things? A. No, sir, I don't think I am mistaken as to that.

Q. "We put timbers in across and set a plank, and then afterwards put in a crib." Is that true? A. That's a mistake altogether. There was a stick put in there, and plank across.

Q. Did you say you put timbers in the channel and stopped up the channel, and some scows came there and flung stone in? Did you say you put clamps on the timber and you fixed some cribs to put in the lake and west of the first crib? A. Yes.

Q. "We put enough to stop the hole." What hole do you mean? A. I meant the hole in this slough; if it was anywhere, it was in there. That was my intention all the while.

Q. Were there two cribs put where you say it was? A. It was only a stick of timber and plank flung across, and stone.

Q. "We put in some two or three cribs some two or three rods high." A. [Laughing.] That is about as correct, probably, as you have got the rest of it.

Q. That's precisely as Mr. Clapp, your own man, took it down. Do you know where Shapley's pile is? A. I have seen it. I don't know where it is now.

Q. How far was it from the angle? A. Probably one hundred feet—I would say two hundred feet, or two hundred and twenty feet from the angle. I don't think it was over two hundred feet from Shapley's pile to the angle. I should sooner think it was a little less; probably one hundred and seventy-five or one hundred

and eighty feet east of the angle. I should judge it was in the neighborhood of two hundred feet. I never measured it. It was my impression it was driven in the first crib; but I wouldn't be positive as to that. It was in the first or second, at the east end of the first, or west end of the second.

Q. That you think is two hundred feet east of the angle? A. It may be a little over two hundred feet, or a little less.

Q Was it not within twenty or thirty feet of the angle? A. No, sir, I think not; not the angle I mean.

Q. Why do you think so? A. I judge from where the angle is.

Q. How long were the cribs? A. Well, they varied. The general run of them are from thirty to forty feet.

Q. When you put down the first crib, didn't you dig out the sand north of it on the sand bar? A. No, sir, we probably put the upper sticks ten feet on the sand. The way the first crib was put together was; in the first place, they took a strip probably thirty feet long, and then another probably thirty-five feet long, that they laid on, and then another forty feet that they laid on top of that. There were three rows that lapped over, and three upon the shore. It was run over the shore probably ten feet.

Q. If this pile was driven then, it must have been driven within twenty or thirty feet of the shore? A. Yes, sir, it was twenty-five or thirty feet.

Q. From that pile out were not piles driven every twenty or thirty feet into the lake? A. Yes, I think so. I never measured them. They seemed to be very regular.

Q. Were they not driven by a pile-driver? A. Yes, sir, I presume so.

Q. How far do you say the old lake shore was then, beyond that spile? A. Well, it may have been twenty five or thirty feet from that. It was about twenty-five feet from Shapley's pile.

Q. Shapley's pile, you think, was driven within twenty feet of the lake shore? A. Well, the point was washed off near it, on the lake shore. The water had cut off the point so that the pile-driver would go up near the shore.

Q. But the pile was driven within twenty-five feet of the old shore? A. It was of the new shore.

Q. How did that pile-driver get there, and when? A. It just floated there on the water. It was on Sunday, in 1835.

Q. What month? A. I won't swear positively, but it was in June, I think, sometime.

Mr. Arnold.—The crib was not put in until August 1st? A. I am not positive. I won't swear to the month. It's my impression it was either June or July, or somewheres along there.

Q. Did you have any storms from the time you commenced until you run out the ends of the pier? A. Yes. I didn't help run out the pier to the end. I think I quit somewhere in the summer of 1834. I can't tell exactly what time.

Q. If you commenced on the 1st of August or last of July, how long did you work? A. I say I quit along in July or August.

Q. You don't know how many feet was run out that year? A. Yes, sir, I know.

Mr. Arnold.—By hearsay? A. By hearsay and seeing with my own eyes. I should judge it was about six hundred feet.

Q. How long did it take them to run out six hundred feet? A. It took them the best part of the season. They could run out pretty fast if they had weather. They put down two or three cribs a day.

Q. How long after the first crib was put in before the pile was driven in the first or second crib? A. It was put in right away. There was not more than two or three cribs, I think not more than two, before we commenced putting in piles in order to hold or keep them.

Q. How much had they done before you left? A. I should judge they might have gone out one hundred and fifty or two hundred feet.

Q. Didn't you quit work on the pier in the spring of 1835? A. No, sir, I think not.

Q. Didn't you say so on your former examination? Mr. Reporter Clapp says you did. Did you see anything of a breach in the south pier? A. Yes, sir.

Q. How was it stopped? A. It was stopped with brush, stones, and sand or gravel.

Q. What kind of brush? A. I couldn't state what particular kind. They were got on the lake shore somewhere. It was put on the east shore of the river, and the west bank of the sand-bar.

Q. How wide was the sand-bar? A. Three hundred to three hundred and fifty feet, I think.

Q. Did you ever see it any less than that while you were there? A. I think I did a little up to the time the pier was laid across there. After the river went straight out, it washed off.

Q. Before the river went out straight, did you ever see it so that a span of horses couldn't go along on the sand spit to the north side without getting into water, between the lake and the river? A. No, sir, not up there.

Q. You never saw the river change that bar before? A. No, sir.

Q. Was the lake shore changeable there before the pier was put in? A. No, sir, not much if any.

Q. You never saw it change any? A. No, sir, not much so.

Q. Didn't you say on the former trials that this was cedar brush that was put down there? A. I don't recollect.

Q. Don't you recollect now that it was cedar? A. No, sir, it strikes me now that it was not.

Q. If that was your former statement, it was a mistake? A. I

don't think that I did. I swore at one time that there was some cedar brush stood near the bank of the river.

Q. Did these juniper bushes? A. I don't know that I said they were juniper. It was juniper that stood within twenty or thirty feet from the river.

Q. Was that cut and put into the breach? A. No, sir. I think in swearing here before, I testified that there was juniper or cedar brush put in four feet high.

Q. Did you state that they were cut and put in that breach? A. No, sir. I don't know what these brush were. They were cut on the lake shore, and fetched down by teams. I wouldn't be positive in what year they were put in.

Q. When was the pier finished out into the lake? A. I couldn't tell you.

Q. Did you work on it after 1835? A. I didn't work on it in 1835.

Q. In passing along you saw the accretions along the lake shore and pier? A. Yes.

Q. You casually noticed it? A. I noticed in particular that it made very fast. It went right along. No one could help noticing it. After a pier was put out you could see it made on.

Q. How many heavy blows did you have that season? A. Sometimes we used to have very heavy blows. We used to have one or two through the fall, and one or two through the spring.

Q. How much would each blow make? A. I couldn't say. I saw it make on a good deal. I never examined more than to notice it. I never measured it. I only give it as my judgment.

Q. You never had any interest there in the accretions, had you? A. No, sir, I never did.

Q. It was a casual observation? A Yes, I noticed it increased very fast. I was there very often.

Q. But the actual extent you don't know? A. Only what I judge. That is my judgment.

Direct examination resumed by Mr. Fuller.

Q. Were there one or two piles driven in the first crib? A. It strikes me that on the north side there was one pile driven in.

Q. Was that one called the "Buck Morris Pile?" A. No, sir; his was still below that, nearly on the line of the lake shore.

Q. How far from "Shapley's?" A. I should judge from twenty-five to thirty feet. The "Morris pile" was east of "Shapley's pile."

Q. When you talked to Judge Morris about the lake shore, and commencing the pier on the lake shore, are you speaking of the shore where you put in the pier, or where it was washed off? A. I am talking of where we put in the pier—where it was worn off.

Q. How far west of the old shore do you think?

Judge Morris.—It was where the "Buck Morris pile" was? A. No, sir, it was from forty to fifty feet from that.

Q. I omitted one question. Do you know of a fence being erected between Mr. Jones' and Mr. Johnston's land? A. No, sir, I noticed a fence there, but I couldn't tell whose ground it was. I know Mr. Jones claimed the ground on the east side of the fence.

Mr. Wills.—What year was this fence built? A. I wouldn't be positive. It strikes me it might have been built in 1845 or 1846.

Q. Where did that fence strike the pier? A. It struck it about from fifty to sixty or may be seventy feet east of the west end of the pier.

Q. Since then have you observed Mr. Jones in the occupancy of the land? A. I repaired—that is there were some buildings there that he employed me to repair; I think it must have been in 1837 or '38, somewhere along there. I don't recollect exactly. There were some buildings moved down there. I think one of them was used for a slaughter-house. I went there to repair them.

Q. What were they employed for after they were moved there? A. I think one of them was used for a slaughter-house, and there was cattle sent there, I think, for Mr. Sylvester Marsh.

Q. Do you know how long it remained in their occupancy? A. I wouldn't be positive. It might have been '46, or '7 or '8, the buildings were there. I couldn't recollect exactly the time about these things. I don't know when I last saw them. I saw them there some four or five years. They may be there now for what I know. I haven't noticed particularly.

Q. How far east from the fence did they stand? A. I think the first building stood—

Mr. Arnold—Do you know the lot they stood on? A. No, sir.

Q. How far east of this fence? A. I think it was twenty-five or thirty feet may be east of this fence.

Q. Were they nearest the street or the pier? A. Nearest the pier.

Second Cross-examination by Mr Arnold.

Q. Do you know who put that fence up? A. No, sir, I haven't any knowledge of it.

Q. Do you know it was put up before '47? A. I wouldn't swear positively. It strikes me as though the fence was there before.

Q. Can you swear that the slaughter-house was moved down there before '47? A. I won't swear exactly when the thing was moved. I don't recollect. I don't know what lot it was on, any more than I saw the fence setting there.

WILLIAM LILL, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In 1835.

Q. Where from? A. From Kentucky here, sir.

Q. What did you do after you came here? A. The first work I did after I came here was on the harbor, for the Government. The first work I did was rafting timber down the North Branch for the building of the piers.

Q. Upon which pier were they at work? A. They were not at work at any when we were rafting timber down. It was the 20th of May we commenced rafting timber down. It was used probably for both piers. It was got principally for the north pier.

Q. Are you speaking of '35? A. I was employed the first work in Chicago in raising the pier that had been put in in 1834.

Q. When did you begin work on that? A. I should think from about the first to the tenth of June.

Q. Where? A. They had commenced heightening the pier up in 1834. That was where I was at work. They were at work all along the pier at the same time. That was not more than three hundred feet. I worked there a year, but in the fall [?] I only worked a short time there, probably two weeks. That was on the north pier.

Q. Have you resided in Chicago ever since? A. Yes, sir.

Q. In what part of the town? A. Right on the same lake shore, half a mile north of the pier, on Kinzie's Addition. I have lived there since.

Q. State what you observed about the growth of land north of the north pier? A. I don't know what the lake shore was before 1835, but by the north side of the north pier there was probably over two or three hundred feet of new land made, commencing from the west end of it.

Q. Where did you live in the summer of '35? A. I lived right close by in the Government shanty, between Pine and Sand streets, just north of Water street.

Q. Were you engaged by the Government that summer? A. I was, sir. I was employed until about the first of May, 1836.

Q. What kind of a season was '35, as respects weather? A. It was very rough, boisterous weather.

Q. Did it hinder the work on the pier? A. It did very much, for the very reason that I know, after the cribs were ready to float out to sink in the pier, they frequently had to wait three, or four or five days before they could get them out.

Q. Did you observe the growth of land there that summer? A. I noticed it all the time. It grew very fast—just about as fast as they put in the pier, that fast the sand would make.

Q. Was the sand piled up in storms? A. Of course. The north and north-east winds brought up the most sand.

Q. Where was it left highest? A. It was left highest close to the pier, of course.

Q. How high did you raise the pier that summer? A. I don't recollect, but I suppose four or five feet high.

Q. Did the sand come to the top? A. Oh, yes, it blowed over it frequently.

Q. Have you ever observed similar erection? A. Of course, similar erections on the west shore would have the same effect. There is no doubt about that.

Q. Have you observed the construction of the Hydraulic Works? A. Of course I have. I watched it from the first commencement.

Q. Have you ever observed the growth of accretions against obstructions? A. I have on the pier. Wherever you put an obstruction, if it is only twenty feet, the sand accumulates on the north side in all instances I have seen.

Q. Describe this bit of new land in the summer of 1835, north of the pier? A. That's a hard matter. Sometimes, probably, it would cover the timber and chips, and the next blow would cover them all up with sand. I have known heavy blows to pile up the sand from a foot to eighteen inches by one blow; and, of course, any small articles laid around would be covered up.

Q. How far had it made by the autumn of 1835? A. I think when I began, it was two hundred or three hundred feet, and when I left it was five hundred or six hundred feet. That's as near as I recollect.

Q. What was the shape of this accretion? A. It always rather formed a point. It filled up close to the pier faster than it did north of it.

Q. Do you recollect how far the pier was carried out in the fall of '35? A. I do not distinctly. I suppose by the spring it was out one thousand or twelve hundred feet in all. I was there a great deal more or less, and have been on the lake shore almost every day since then.

Cross-examined by Mr. Arnold.

Q. I don't know that I heard you say when you stopped working on the pier? A. In the spring of '36; that is, I left working on the pier, but still I was at work on the sand.

Q. From '34 to '36 it made out five or six hundred feet? A. I don't know anything about '34. I only state what there was from '35, when I commenced, and then there was two or three hundred feet of new made land, and in the next year it made about the same.

Q. Did it make as much in 1836 as the year before? A. That I could not say. It depended a great deal on circumstances. I don't know what it made in 1836. I know it continued still to make every year.

Q. It made in '36 and '37? A. Yes, and '38; as fast as they could put out the pier, so fast would it make. If they stopped the pier, the sand would not make within a certain distance of the end of the pier.

Q. You never measured these distances? A. No, sir, no more than I have walked over it hundreds of times.

Q. It is a mere opinion? A. Yes, but it is a correct opinion.

Q. I am not attacking it. A. I want it understood it is correct. There is no doubt about it.

Q. How many times do you want to swear it is not incorrect? A. I can say that.

Q. Say it just as often as you want to. I simply asked you if it was an opinion? A. I tell you it is and a correct one.

Q. You came in 1835? A. I did, sir.

Q. You don't know where the lake shore was before they commenced the north pier? A. No, sir, I don't pretend to know anything about it. I know what I state, when I say there was two or three hundred feet of new made land by the pier, when I commenced.

Q. You are of that opinion from the appearance; you don't know where the old shore was? A. Of course

Q. You think it was new made land? A. I know it was new made land from its looks, and the shape of the shore, and the operation. I have lived there twenty-five years, and I know how it looks exactly. I know it was new made land.

Q How much of that is your opinin? A. I knew well enough to know it was new made land.

Q. You don't know where the old lake shore was? A. I know very near. I could point, probably, as correctly as most people here. All above the new made land—

Q. Mr. Lill, I have no controversy with you. You don't know the old shore? A. No, sir, I was not here—not on the pier when it was begun, and I didn't see it, but—

Q. However confident you may be in your opinion, you never saw it? A. Of course, I never saw the old shore. That was covered up by the new made land. But I knew this place where they professed that water had all run over, and that was on the old lake shore.

Q. Where they said the old shore was? A. Yes, where the water run over, and where it would run over to this day if there were no improvements.

Q. Will you answer me a few questions directly? A. I will.

Q. Tell me where the water ran over? A. It was at the west end of the pier.

Q Did you see it? A. I have seen it run over.

Q. When? A. In 1835, in one particular blow.

Q. What time? A. I don't recollect the time of the year. I know it runs over when we have a heavy blow, as you know. You know now whenever there is a heavy blow it does, and it—

Q. You are making a speech again. A. I mean, if I testify, to testify in my own way.

COURT—Answer the questions directly.

Witness—I was going to explain how it run over. You asked me where it run over, and if I saw it.

Q. I asked when? A. I say in 1835.

Q. Was it spring, or fall, or summer? A. I think it was in the summer, but I am not certain about the month. I think it ran over more than one month, and I think it would again if—

Q. Never mind your reasons. It run over several times in 1835? A. I didn't say so. I only recollect it distinctly once. I think it did more than that, but I am speaking of the time I saw it and knew it.

Q. Why remember that particularly? A. I guess it was such a severe storm as I hadn't seen before.

Q. Any shipwreck? A. I don't recollect any.

Q. What quantity ran over? A. I don't recollect.

Q. How wide a stream over the west end? A. I don't know. I can't tell, because I was not working on the pier at the time, and only went down to look at it. It washed right over the top of the pier and around behind.

Q. A current around behind? A. Yes.

Q. How much current? A. I can't say. Of course when the wind was washing the water up it must have some place to run.

Q. Did it wash out a channel? A. Of course, it washed some dirt out.

Q. How wide a space did it leave? A. I don't know. I don't think it left any space after the storm was over. I guess the water settled down, and there was nothing to run.

Q. But if it washed out the sand, didn't it leave a channel? A. Not where there was any water went over.

Q Did it leave a hole—a depression? A. I think, of course, it did. I didn't go to see it afterwards.

Q. What you saw was only during the storm? A. Yes.

Q. Can you give us any idea how wide the stream was that run into the river from the lake west around the end of the north pier? A. Not at all.

Q. Do you think it was fifty feet? A. Not half of it.

Q. Was it ten feet? A. That I don't know. I couldn't say correctly. The water at the same time it was running through there, was washing right over the pier.

Q. We are not talking about that. A. You asked how wide it washed over, and I told you.

Q. Can you give us any idea how wide it was? A. I have told you distinctly I can't.

Q. I am trying to see whether you can't refresh your memory? A. I cannot. I have told you all I know on the subject.

Q. It may be I can refresh your memory. A. Try it.

Q. You say it was not twenty-five feet wide? A. I told you I couldn't state whether it was twenty-five or ten. I know it went through, but the width and depth I don't know.

Q. Did you go across it? A. I think not.

Q. Why not? A. What should I go into the water for? I was not made for water.

Q. If it was so narrow, you would cross it to get on the pier. A. I shouldn't go on the pier in such a storm.

Q. Could you step across? A. No, sir, it was too wide. I wouldn't go on then probably, because I would have been washed off.

Q. Do you think your solid weight would have been washed off? A. It was not quite so solid then. I did not carry so much.

Q. Do you think a ten-foot plank would have spanned it from the pier to the shore? A. I don't know.

Q. Would a twenty foot plank? A. I don't know. I didn't see it planked.

Q. Is it not as easy to express an opinion as to the width of a stream running that way, as an accretion of sand. A. On that accretion of sand I was at work every day. I was not crossing that stream every day.

Q. You went down to look at it? A. So I did. But I didn't go down to make up my mind how wide it was, or how deep it was. When I was working there with a team, and had may be twenty or thirty men at work, hauling out timber and depositing it for cribs and for heightening the pier, I know there was may be several thousand feet of timber laid on that accretion in 1835. And I know from things that I recollect, that there was two or three hundred feet of new made land. The only reason I have a better recollection of that is because of this timber.

Q. You have a better idea of the width of the accretion than of the water behind here? A. It appears so.

Q. Do you remember where they commenced leveling up the pier? A. Probably all the length of it, pretty much at the same time.

Q. You laid your timber at its most convenient position, with reference to the place where it was to be used? A. Of course. We hauled it up and framed it for different purposes.

Q. Where? A. A good deal was hauled out on this new-made land.

Q. West of the pier? A. Yes, and then on this new-made land.

Q. It was framed on the land west of the pier, was it? A. Yes, and north of the pier.

Q. Was there any slough north of the pier? A. No, sir, I never knew any.

Q. You laid timber all over the slough? A. It was all over dry land there, excepting after a heavy blow.

Q. There was no such slough? A. I never saw any. I have heard tell of this slough, but I never saw it, and don't know any-

thing about it. To the best of my knowledge there wasn't any there.

Q. Then the water that came through and formed that current around the west end of the pier came from Lake Michigan? A. Of course it did.

Q. You said as far as they put out the pier, so far the sand filled in, do you mean that? A. I don't mean that if they put in one hundred feet to-day, it would fill up one hundred feet to-night. But within two or three months it would fill up within one hundred feet or so of the end. It had such a tendency, and after that time it didn't appear to fill so fast.

Q. Twelve hundred feet were put in in '34 and '35. A. I don't know.

Q. Suppose there was, how far had it filled? A. To the best of my judgment it was filled up five hundred feet by the spring of 1836.

How much the next year? A. It kept filling up gradually, I can't say how much the next year. I was not there at work.

Q. You were on the lake shore, give us your best judgment? A. Probably two or three hundred feet more.

Q. Making nine hundred feet? How much in '37? A. I think not so much. I think the work probably stopped, and the accretions of course stopped. I don't recollect distinctly on the subject. It did not fill up in 1837 and 1838 as fast as in '34, '35 and '36, because there was so much space to fill there.

Q. How much did it fill up by 1838? A. I don't know.

Q. Do you think eight hundred feet? A. I don't know. I think there is an accretion of eight hundred feet or more now.

Q. How much in 1838, more than twenty years ago. A. I can't tell any better than I have told you. That it filled in '35–'6, six hundred feet. I can't tell you any nearer than I have, if that comes within three hundred feet it is about all I know about it. I think it filled up gradually, but nothing in proportion to what it did in the first two years, for the reason that the space was so much larger to fill.

Q. Will you now answer me directly. Do you think you could tell within three hundred feet of the amount of accretion in 1838? A. Probably not.

Q. Could you in 1837? A. I think there was six or seven hundred feet.

Q. Don't you think you might vary two or three hundred feet? A. I couldn't vary under four hundred and have any thing left. I have answered your question distinctly to the best of my knowledge.

Q. Did you see any crib or L at right angles with the pier standing north? A. I remember the timber being put in but not up to the pier.

Q. It was put in in 1836? A. I think so, but I wouldn't be

confident, although I know the man who put it in, and the man who took it out.

Q. What makes you think it was '36? A. From several circumstances. I know Mr. Barnum leveled the sand on the shore, and put timbers in. I think it was in 1836.

Q. This was a pier of timber near the west end of the north pier, extending northerly? A. That I have never seen.

Q. Forming an L and stopping a hole made by the water coming through? A. I never saw it. This timber I am speaking of was put in, and considered at that time to be a protection to the lake.

Q. Away up the shore? A. Not near the pier.

Q. These were put in to catch floating sand? A. Yes.

Q. You recollect the building of the north pier? A. Yes, I was down there frequently.

SAMUEL BROWN, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In May, 1833.

Q. Where from? A. St. Joseph, Michigan.

Q. How long did you remain here? A. About a week the first time I was here; I returned about the 1st of September, just about the time of the Indian treaty; then I remained until the spring of 1835, in May; then I went to Milwaukee, and I have lived there ever since.

Q. What was your business after you returned in the fall of '33? A. Carpenter and joiner-building.

Q. Where did you work? A. Different places. I built the old Trement House first; also the Exchange Coffee House for Mr. Beaubien.

Q. Did you do any work on the harbor? A. No, sir.

Q. Had you any interest in it? A. I had no further interest than any other citizens; but we all took a deep interest in the improvement, and at all leisure moments we ran down to the harbor and pier.

Q. You recollect the building of the north pier? A. Yes, I was down there frequently.

Q. Do you recollect, after the building of that pier was commenced, and before your leaving for Milwaukee, of any land making on the north side of it? A. I do.

Q. Tell how often you were down there, and what you observed that fall? A. Probably there was not a week through the fall but what I was there; sometimes perhaps twice. I was there every week. I can't say positively how many times, but very often. I noticed the new land was making out pretty rapidly, from the time they commenced the pier.

Q. Did you observe it again in the spring of '35? A. Yes, sir, I observed that it was filling out very rapidly. The accretion

made against the pier from the time it was built until I left in the spring of '35. At that time it must have filled out from the end of the pier somewhere about three hundred or four hundred feet—perhaps more.

Q. What had been the weather during the fall, winter and spring of '34 and '35? A. We had some pretty rough weather in the fall of '34, and the spring and summer of '35, and into the fall of it we had a great deal of rough weather.

Q. Did you return here after you went to Milwaukee? A. I went from here in May, and returned the last of May or first of June, and I was here again in July, and again in August. I came by lake in a vessel.

Q. Where did you come in? A. Into the harbor. I got off at the north pier. I don't recollect lashing the vessel there.

Q. Did you observe any progress in the accretion when you returned? A. Yes, sir.

Q. How late were you here in '35? A. I left here in the latter part of August. That was the last I was here that fall.

Q. Were you over on the north pier on this new made land? A. I was.

Q. Who did you know and see on the works? A. I saw Mr. Jackson, and I saw a man by the name of Odell, and Delainy, and another man named Skinner.

Q. What was the appearance of this new-made land? A. It gradually sloped off to the water's edge. When I was here in August, the shape of the shore had materially changed.

Q. Describe that change. A. The shore of '33, I should judge, run nearly north and south; but in August, '35, it was running from where the shore struck the pier in a northwesterly direction, or rather west of north considerably—northwest and southeast. The part of that new-made land was highest that was farthest from the water. It sloped off.

Q. What was the height of the piers? A. I should judge the piers were about four timbers above the sand.

Q. Was the sand in ripples or waves, or was it smooth? A. Every blow would form a sort of wave or bar. You could see where it got to each storm frequently. You could see a different shade in the height.

Cross-examined by Mr. Arnold.

Q. You have seen an angle there during the other trials? A Yes, sir, I saw it when it was built.

Q. I refer to the angle about twenty-two feet west of a pile called Shapley's? A. I don't know any thing about it. I have heard a great deal said about it.

Q. Do you know where the piles were commenced? A. I know of piles being driven there.

Q. Did you ever know one on the lake shore? A. No, sir.

Q. Is that angle there? A. No, sir.

Q. Are you sure of it? A. Yes, sir.

Q. How far east of that is the lake shore? A. I can't tell the number of feet. The old lake shore, before there was any pier there was some three hundred feet from that angle, but that was not the point where the first crib was put in.

Q. Where was it put? A. I don't know as it was three hundred feet, but it was twenty or twenty-five feet, on that sand-bar, east of the river. The pier was somewhere in that neighborhood, but at the time the pier was put in, the water had washed off the end there, so that it made a bow around, and the pier was put in there.

Q. Do you remember of a storm breaking through in 1835? A. I don't remember of a storm breaking through there in 1835. There was a storm broke around there in the fall. I can't tell what time. If I was going to guess, I should say about the time of the equinoctial storm.

Q. What year was that? A. '34.

Q. Didn't you testify on the other trial that it was '35? A No, sir.

Q. You are positive? A. I am positive.

Q. Describe it? A. Perhaps these gentlemen can tell what a storm is as well as I can. It was a heavy storm, and it broke over and the water washed around the end of the pier.

Q. What was the effect? A. It cut a channel along side the crib, behind the crib into the river, from five to seven feet wide on the top. The water went around until it kept caving off, until it was seven feet from the end of the pier to the sand again—to the bank. A little channel washed around.

Q. How deep? A. Deep enough to let the water run to the river. Perhaps it was two feet or a foot and a half below the surface of the water in the river. It let the water pass around.

Q. Then after the storm the river ran out there? A. No, sir.

Q. Why not? Didn't you say the water washed as deep as a foot and a half below the river? A. I don't know as it was a foot and a half lower than the water in the river. But it cut down so that there was a channel into the river.

Q. How deep below the surface of the water? Didn't you say it was two and a half feet? A. I didn't say it was two and a half feet. I said about two feet. I couldn't see. When the storm was over I could see.

Q. Do you think it was two feet? A. No, sir.

Q. What's your judgment? A. I know the water run around there.

Q. Was it two feet? A. I don't know. I can't say it was two feet.

Q. Didn't you say so? A. I don't know—I might have said so.

Q. Didn't you say two and a half feet? A. I didn't mean to. I

said I thought it might have been two and a half feet. I won't swear it was a foot.

Q. Will you swear any thing about it? A. I swear the water passed around, and the storm broke over the timbers of the pier. I can't give you any idea how deep the water run around, more than I think it passed around, and it may have been two feet, but I don't know.

Q. Have you the remotest idea? A. I think I had some small idea.

Q. Give us some idea of it? A. I have already.

Q. What did they do to stop it? A. There was some timber put across. and some plank put around, and brush and stone put in to stop the water.

Q. Didn't it alarm the people who were working there? A. Yes.

Q. You heard expressions of alarm? A. I heard some speaking of it, that there was danger of the pier being undermined by this current washing through. There was no trouble after it was stopped.

Q. How long after it was made before it was stopped? A. It was not long, because they went right to work reparing it.

Q. Were you there when they were repairing it? A. I don't know. I was right soon after they were at work.

Q. Did you see them filling it up? A. I don't know as I did.

Q. Did you say on the other trial that they put in hay there to stop it from running around the end of the pier? A. That was not it. That was at the east end of the crib that was sunk to fill the channel in the bed of the river, on the east shore of the river.

Q. Did you hear the testimony of Mr. Lill, the gentleman who was examined before? A. Yes, some of it. I don't know as I heard it all.

Q. About the slough? A. I don't know as I heard him saying anything about the slough. I didn't hear him testify to that. I heard him say that there wasn't any there.

Q. What do you say? A. I say there was a low place back from the pier—that's before the pier was put in—a low place where it grew up flags, and in a heavy storm it pitched over, and sometimes it would go down there; and at one time it did come down there and it broke over the cribs. That was in the fall of '35.

Q. How long before the storm's breaking in that you spoke of? A. I don't know. I think it was after that.

Q. Did you ever examine that slough? A. Yes. You may call it a slough. It was a low piece of ground. Water would stand there sometimes in a very wet time, and it would break through into the river.

Q. At the same place as the other you spoke of? A. No, sir, this is farther west. I don't know how much further.

Q. Give us your best judgment? A. It might have been one

hundred feet around—possibly more. I wouldn't state that it was more than one hundred or one hundred and twenty-five feet. I don't recollect the distance.

Q. Do you pretend to be very accurate about distances? A. I could not, because I only measured them with my eye.

Q. You are going to be accurate about the accretion? A. Not very accurate. I had more occasion to take notice of it in 1835. I am not accurate in measuring the hole, how deep it was, but I was walking on the pier back and forth.

Q. Didn't you have to cross this slough? A. Yes, this slough was very narrow.

Q. If you crossed it, why can't you tell as well about that as the accretion? A. I have not stated that very accurately. I think I noticed the making of new land more than this distance from the pier. [Illustrating.]

Q. Are you as accurate about one as the other; is it not the same reason in both cases that you noticed? A. You won't let me tell the reason. You stopped me. If you will let me go on and tell, I'll tell you.

Q. You was not answering my question. How far east of the angle in the north pier was the old lake shore of 1833? A. I should judge it was somewhere in the neighborhood of three hundred feet, before the pier was put in—perhaps a little less than three hundred feet. I said that angle was twenty-five or thirty feet on the beach from the east shore [of the river]—two hundred and seventy-five feet, taking off twenty-five feet for what lay on the shore.

Q. What was that two hundred and seventy-five feet east of the angle before the pier was built? A. In '33 it was a sand-bar. In '34 it had rounded off so that instead of being two hundred and seventy-five feet, it was, probably, only one hundred and seventy-five feet.

Q. That was still sand-bar? A. Yes.

Q. When was that pier put in? A. It was commenced in the summer of '34. I can't swear to the month.

Q. Do you know that these piles were driven there in August, '34, across what you call the sand-bar? A. I never noticed particularly as to the spiles there.

Q. If piles were driven across there, eighteen feet long and ten feet apart, with a floating pile-driver, in '34, don't you believe there was water there in '34, and that you are mistaken about its being sand? A. If I allowed all your premises I would, but I don't allow them. If they were driven with a pile-driver on a scow, in '34, I don't think they could get there with it. I know they had a hand pile-driver on land, and if they were driven at all I think they were driven by that hand pile-driver. That's my opinion.

Q. If you are mistaken about the locality, you are mistaken

about the whole matter? A. I don't think I am mistaken. I didn't say so.

Q. Wouldn't you be mistaken about the whole matter, if you are mistaken about the locality? A. If I were mistaken about coming to Chicago, I would be mistaken in all this of ever seeing the place.

Q. If you are mistaken in the lake shore, would you not be mistaken in the accretion? A. I wouldn't be mistaken in the accretion, but I would as to where it began.

Q. Will you answer my questions directly? A. Yes, sir, but I was sworn to tell the truth, the whole truth, and nothing but the truth, and when I tell that truth, I want the privilege of telling the truth, and not saying one thing only.

THE COURT—You will answer his questions.

Witness—I will, if it is proper.

THE COURT—You are not to judge of that. If he puts an improper question, the counsel on the other side will probably object, and the Court will decide.

Witness—I have no hesitation in answering any question, but I don't want to say anything but what is so. I don't want to get it different.

Q. You don't like to answer a question that goes against your theory? A. Yes, sir, but I don't want to answer a question to state a thing that I know is false.

Q. You are sometimes mistaken? A. We are all fallible.

Q. Do you swear positively that three hundred feet east of that angle was the old lake shore? A. Two hundred and seventy-five or three hundred feet. I have no doubt of it.

Q. You are absolutely certain? A. I am as confident of it as I can be of anything, without I had put on the measure and measured it exactly. I think it was in that neighborhood.

Q. Have you looked at that angle during any of these trials? A. Yes, I was down at the last trial.

Q. Are not piles driven east of that angle regularly every ten feet for about three hundred feet? A. I can't tell. I know there were piles driven there, but whether they were driven every ten feet, I don't know.

Q. Were they on both sides? A. I think so.

Q. You think they were driven by a hand pile-driver? A. I think they were.

Q. When you go up west from that angle, is there a single pile to be found in the pier? A. I think there was.

Q. Will you swear there was one? A. No, sir, I won't.

Q. What was there? A. The river bed came down about, perhaps, within twenty-five feet of that. [Illustrating by the map.]

Q. There is an angle in the same position opposite? A. It is very nearly opposite.

Q. Did you go on the south pier at the time of the other trial? A. I went on there at one of the trials; I believe the last one.

Q. East of that angle on the south pier, didn't you find piles driven along for three hundred feet, where the witnesses on the other side say Lake Michigan used to be? A. I wouldn't be positive, but it is my impression there was no piles there.

Q. Will you swear there were not piles there every ten feet? A. I have no recollection of seeing piles there.

Q. Did you go there? A. I presume I did. I went there, not for piles, but to find where the bed of the river was.

Q. You heard the trial, and know the difference there was between the witnesses. You say it was the sand-bar where they said it was Lake Michigan? A. Yes.

Q. And they said they would prove it was Lake Michigan by the piers on each side? A. They testified so.

Q. Didn't you see the piles then? A. I don't say whether I saw the piles or not. I think very likely there were piles there.

Q. Didn't you say just now there was not? A. No, sir.

Q. What was your impression? A. I don't remember seeing any piles there. Possible there was.

Q. Did you find piles where they said the sand-bar was? Did you find piles in the river, and no piles in the sand-bar, as they claimed it? A. There was two or three piles there or very near.

Q. Did you find piles on the north side of the south pier for three hundred feet there, and no piles on the south side? A. I couldn't say.

Q. When you got across the sand-bar, you found piles driven on both sides? A. Likely you're correct.

Q. If you are in error three hundred feet in regard to this lake shore, you are in error in regard to this accretion? A. No, sir. I know how the lake shore was in '33, before there was any pier built, and afterwards.

Q. Will you answer my question? To find a certain number of feet of accretion, you take a starting point from the old lake shore?

Mr. Lincoln—No, it is from the end of the pier.

Q. Your accretion is upon the lake shore? A. Yes.

Q. That is where it formed the accretion? A. Yes.

Q. You computed by saying the accretion came out a certain number of feet beyond, as you supposed, the original shore? A. I sav the accretion made on from the end of the pier on the shore. Yes.

Q. If you're mistaken three hundred feet as to the place where the shore was on which the accretion formed, you are mistaken as to the extent of the accretion? A. No, sir; the lake shore run at a certain direction, and when the river cut through, the north point washed off so as to make a bend of nearly one hundred feet

west down to the pier, and the commencement of the pier was at this point, where the lake was in '34, instead of '33, and then it came out seventy-five or one hundred feet before it got to the old lake shore, so that that must be filled first, so as to alter the shape back to what it was in '33.

Q. What did the accretion form on to? A. It formed on to the lake shore.

Q. You say the accretion is on the original lake shore? A. Yes.

Q. If the original lake shore is any number of feet from where you supposed it was when the accretion began, then you're mistaken in the extent of that accretion? A. No, sir.

Direct examination resumed by Mr. Lincoln.

Q. How far was the accretion from the west end of the north pier out eastward, in the fall of '35? A. From four hundred to five hundred feet.

Q. Will that accretion be longer or shorter, whether the original shore was at the middle or either end of it? A. No, sir, it would be the same, and that is what I was saying.

Mr. Arnold.—Then you have nine hundred feet of accretion? A. No, sir.

Q. It don't make the pier any longer, or the accretion any longer, if you have three hundred feet more to fill? A. No, sir.

Q. If the lake shore was three hundred feet, or three miles from where you supposed, the accretion would still be only three hundred feet? A. Yes, sir.

Second cross-examination by Mr. Arnold.

Q. Was the accretion three hundred feet from the east end of the pier? A. I say in the fall of '35 it was four or five hundred feet of accretion. I don't know how long the pier was.

Q. Do you give the accretion measuring from the west end of the pier? A. Yes.

Q. If you start from that west end at the shore—

Mr. Fuller objected to repetition.

Witness.—I would answer any questions that I know, and can answer, as I have no feeling in the case, on one side or the other—no friendship for one more than the other.

ROBERT SHEPPARD, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In the spring of 1835, about June.

Q. Where from? A. Buffalo.

Q. Where did you live here? A. On the north side, a little back of the Lake House, as it is at present. I lived over on the north side ten years; I lived about one year on the lake shore, in a yellow house, the house nighest to the lake of any in town.

Q. How far north from the pier? A. I should think, in feet, far as from here [corner of Washington and Clark streets,]

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down to Lake street. That was in the fall of '35. I raised a building of my own that I was putting up that fall. I was that fall putting up a building for myself. I bought a lot for myself from Mr. Ogden, block 18, Lake street. In '35 I raised my building, and I finished it off in the spring of '36. It was on Sand street, a corner lot.

Q. When did you come? A. In June, I think, in '35.

Q. What did you do that summer? A. I worked at carpenter and joiner work. I never worked on the piers.

Q. Did you go down on the piers that summer? A. We all used to go down, or most of the folks, to see vessels come in. I used to go down. I was glad to see friends come to this town.

Q. Did you observe any land making against the north pier? A. We all talked about the land making there. In '36 and '37 it made pretty fast.

Q. What did you observe in '35? A. I observed the men at work, because I was at work myself.

Q. Did you observe any land making there in '35? A. I don't think I took any particular notice. In '36 and every year, I know it gained considerably; but in '35 I didn't take particular notice.

Q. Did you see the line of logs or timbers lying on the shore? A. Yes, sir, there was a line of spiles lying on the beach. This was on the beach where there was a kind of gravel. There was logs all along right straight down from my house. They were piled all along in little bunches here and there.

Q. How far from the water? A. I should think from two hundred to three hundred feet.

Q. How far was the end of this line of logs from the west end of the pier? A. I rather think they came pretty nigh. They must have been a little further west than the west end of the pier where they commenced cribbing.

Q. In '35 how far was it from the end of this line of logs down to the water? A. My judgment is rather slim on that question, because I didn't take notice; come to go back twenty-five years and it takes a pretty good mind to carry a man back. I should think it was down two hundred feet, as near as I could judge.

Q. How much do you think it added on to that within a year? A. In two and a half years, I should think two hundred or three hundred feet more.

Q. What was the appearance of that sand; how was it different from the old land back of it? A. It was all smooth sand by the water driving it up. It was smooth sand in to the other shore, and the other where the old beach was small stones. This was particularly smooth, as smooth as it could be—smooth as the water could make it.

Cross-examined by Mr. Arnold.

Q. You saw this timber in '35? A. Yes, sir, I saw them; they

came in all piled along. There was a lot of 3 by 6 oak stuff. It was there that summer.

Q. You think these timber extended a little west of the west end of the pier? A. Yes, I think they did, the way it lay.

Q. How far west of the west end of the pier? A. I couldn't say without having something to go by. I know the line of the accretion, because it was a different kind of ground altogether. They lay along there.

Q. The water washed up back more or less? A. Yes.

Q. They lay up back of the rise of the water? A. Yes, they were some two hundred or three hundred feet from the water, I should think; but I have seen the water up a good deal higher than that, higher than these timbers. I have seen the water, I believe, in '36 come up two steps into my house. That was right opposite the Lake House barn. They called it the "Yellow House." You remember it.

Q. Yes, I remember it? A. There was three buildings together.

Q. I think it must have been three hundred or four hundred feet from the lake? A. Near as I could judge it was one thousand. The water came clear over there and came up two steps; a step would be about eight inches, making it sixteen inches. It was a big blow, and it all came up there, but it went back pretty quick. During the blow it was covered.

Q. Didn't that water run into the river, west there, over the pier. A. No, sir, it was higher there. Where I was, it was lower, and it kind of run around. There was quite a little rise of ground between me and the pier.

Q. Do you remember of any water breaking through into the river back of the north pier? A. No, I don't know anything about that.

Q. These timbers extended two hundred feet back from the west end of the pier? A. It was from two hundred to three hundred feet down to the water.

Q. You have no definite idea about it? A. Yes, sir, I have an idea because I can place a thing on the ground.

Direct examination resumed by Mr. Fuller.

Q. How near did those timbers lie to the west end of the pier? A. There was a piece of pier that was not a finished pier, but open work, and then it commenced solid work cribs and then there was logs up from this to walk on.

Q. How near this end of the pier did these logs run down? A. I think it was pretty nigh that old work.

Mr. Arnold—The open work? A. Yes, sir.

Q. Have you lived in that neighborhood ever since? A. I lived over there ten years, and from there I moved over to the south side, and from there to the west side. I have been in Chicago ever since '35.

Q. How near to the end of the pier did this line of logs that lay along shore come? The end between the old part and the new part? A. The line of logs came just about to the west end of the pier.

Second cross-examination by Mr. Arnold.

Q. You mean the angle in the old work? A. That is the end of the pier where they commenced cribbing, and there was crib work and open work there.

Q. Where was the end of the timbers, at the crib work or open work? A. Where they joined, exactly; there was open work in the sand here, and they put in cribs here and sunk piles and filled them with stone, and this was as much as two or three feet above this open work, and then there were pieces laid for people to walk up on. [Illustrating by the map.]

HENRY H. HOYT, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In July, '33.

Q. How old were you then? A. I was twelve and a half years old.

Q. How long did you stay? A. Until June, '35.

Q. Where did you go in June, '35? A. To Milwaukee.

Q. Did your father's family come with you? A. Yes, sir.

Q. Did you leave with your father's family and go to Milwaukee? A. Yes.

Q. Where did you live after you first came here? A. We went first up on the North Branch to live. In the spring of '34 we moved down in the neighborhood of the pier. We kept boarding house.

Q. Who boarded with your father? A. I can't tell you. It was the men who were getting timber for the piers. We lived down there until the fall of '34, and then went up on the west side.

Q. What time in the fall of '34 did you leave there? A. That I couldn't tell you. I think it was pretty late in the fall.

Q. Do you recollect how far out the pier was when you left? A. No, sir, not in the fall of '34. I can't tell the distance from my recollection.

Q. Did you that fall observe any new made land making on the north side? A. Yes, sir, and more the next spring, where we lived on.

Q. What called you down there? A. I was down there to play with the rest of the boys.

Q. Did you know Ezra Jackson? A. Yes. He was one of the boys I played with.

Q. What did you observe about the sand in the spring of '35? A. I observed that it made out considerably. The new land had made out considerably. I couldn't tell the distance.

Q. How much in June, '35, when you left? A. I'll tell you

the most I can about it. I know there was new land. At the time I went away from here, I should say it was one-third of the length of the pier. I couldn't tell the distance. That was June, '35. I mean one-third of the way from the west end of the pier to where the east end then was.

Q. What was the appearance of the sand? A. It was the same as the rest of the beach—clean, new sand.

Q. Was there anything to call your attention to it particularly? A. Nothing, only we could get nigher to where the men were at work on the pier. We could go down on the sand nigher than when they commenced the pier, in the fall of '34.

Q. Repeat that. A. I stated that we could get nigher to where the men were at work and keep out of their way, on the beach, in the spring than in the fall—go farther out on the sand. In the spring of '35 we could go farther than in the fall of '34.

Cross-examined by Mr. Arnold.

Q. How old are you now? A. Thirty-nine; I was twelve years old in June, and came here in July.

Q. You remember it as a place where you used to play? A. Yes, sir.

Q. Were the men extending the pier that summer? A. I think they were at work raising the pier higher.

Q. Didn't they extend it out any? A. I don't think they did before I went away. They might, but I have no recollection of it. I never worked on the pier.

Q. You don't know anything about where the old lake shore was? A. No, sir, I couldn't fix the old lake shore there as it was in '33.

Q. Where have you lived for the last few years? A. Milwaukee.

Q. When was your attention first called to this matter? A. The first I heard of it was when the men came back here from one of the trials.

Q. Who? A. Mr. West. He asked me what I recollected about it.

Q. Who else? A. No one I know of.

Q. Who next talked with you? A. That is the time when I came up here, Mr. West asked me again what I knew about it, and he requested me to come—said I had better come.

Q. Did he pay you? A. No, sir.

Q. You came at his request? A. Yes, sir.

Court adjourned until half-past nine o'clock to-morrow morning

Seventh Day—Friday, March 30th, 1860.

Court met at half-past nine o'clock.

One of the jurors, Richard Mascall, reported that he had news of alarming illness in his family, and desired to be excused.

It was agreed by counsel on both sides that the verdict of the eleven other jurors should be taken as that of the twelve, and Mr. Mascall was excused.

PHILIP DEAN, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In the summer of 1833.

Q. Have you resided here ever since? A. Most of the time.

Q. What was your business in the summer and fall of '34? A. My business for the first year or nearly a year and a half from the time I got here, was teaming. I had charge of teams in the city except two days in the week, when I was out, the rest of the time I did. I was here in the city in '34. I was at work for a man by the name of Ingersoll, taking charge of his teams. He owned two stage teams and some seven teams in the city, and I had charge of them.

Q. Do you know the time they were building the north pier? A. I do.

Q. While they were building it, were you getting any timber to be used on it? A. No, it was my business about half the time I was here, hauling timber on the lake shore.

Q. Did you raft any timber up from Gross Point or from the Calumet. A. I did some.

Q. Where did you land? A. The nearest the place where we wanted them. What we wanted on the north side or on the south side, we left on that side.

Q. Did you land any timber on the north side while it was built? A. Yes, may be thirty or forty times. I can't tell how often.

Q. How near the shore did you bring your rafts? A. We brought it clear to the shore.

Q. How near the north pier? A. As close as we could. We went up close to it.

Q. How did you get the timber on shore? A. With an ox-team—we drawed it out.

Q. Were you hindered by storms? A. We were some.

Q. What effect had storms on timber? A. The storms were there and the timbers were there.

Q. How did you find the timbers after the storms? A. If the storm came from the northeast and it was up close to the pier, the timber would be covered up with sand—not covered up entirely,

but bedded so that we had to dig in to get it out. It was bedded in the sand.

Q. How often did you observe that? A. I couldn't tell. A good many times.

Q. How did you get your timber out from under the sand? A. We cut the fastenings and dug down and pried it up.

Q. Was any entirely covered up and lost? A. I don't know that I remember. I don t think it was covered up entirely, or at least but so that we found it after the storm.

Q. Was any timber, that was drawn out, covered up? A. Well, the timber, after we got it drawed out, if it was dry as it is now, it would blow it all over just like a snow drift. That has always been the case on the lake shore.

Q. Did you observe the land making on the north pier as they were building it? A. Yes, sir, I observed it owing to the effect it had on my business, nothing more. It made me a great deal of trouble, and that's the way I came to observe it.

Q. How much did it make out within a year of the time you first began to draw timber in north of the pier? A. It's so long ago I can't tell. I don't know what distance they made that year.

Q. The pier was out seven hundred feet in the fall of '34? A. I suppose it washed out may be one-half of the distance, or may be one-third of the distance on the pier.

Q. When did you leave? A. I left there in the fall of '34. I wasn't there much. I was there some in the spring of '35, but not enough to make it my business there.

Cross-examined by Judge Morris.

Q. Where did you go to in the fall of '34? A. When Capt. Ingersoll moved away, I kept right on.

Q. You kept on with the stage company? A. Yes, sir.

Q. When did you quit work for them? A. Well, I worked for the stage company two years, probably.

Q. Did you assist in working on the piers after December of '34? A. I never did any work on the pier at all. I only brought in some timber and hauled it out there.

Q. Was there any fencing close by where you hauled out timber? A. I believe there was.

Q. Didn't every blow cover that fence up more than along the shore? A. It kept accumulating all the time.

Q. Didn't it accumulate for one hundred yards from the beach around the fence? A. Yes, all the while, I should think.

Q. Then it was nothing new to see an accumulation of sand after a blow? A. No, sir, nothing new wherever you put up a barrier.

Q. It was so, if you put it up on the dry sand? A. Yes, it would cover the timber up there.

Q. What time in the fall did you leave off hauling out timber?

A. Probably about November 1st—in the beginning of cold weather.

Q. Had there been a storm then that had washed the water around the pier? A. I should think there had.

Q. Did you see a gutter around the end of the pier where the water had run around? A. Well, I suppose I did. After a heavy blow it always makes. After a wind the water is deeper and deeper clear up to the bank, and it washes up considerable.

Q. But didn't it wash around the end of that pier? A. I don't know.

Q. Didn't it wash out beyond the west end of the pier, when the wind was blowing, and run around the pier into the river? A. I don't know. I suppose that would be the effect of it. I don't know that I noticed it.

Q. If it occurred there, you wouldn't be as likely to notice it as the accumulation of sand? A. I should notice anything that affected my business. If it didn't cover up my timber, I never noticed it.

Q. Was not some of your timber taken up and used to keep the water from getting around the pier? A. Not that I know of.

Q. Didn't they become alarmed about the pier? A. Yes, I believe so, as far as hearing them talk, I know it. I have heard them say so repeatedly. I don't know as it was about the time I left.

Q. Did you have any storms in October, '34? A. Not very heavy until about that time, I believe.

Q. Was that timber you hauled out, for the Government or yourself? A. That timber belonged to Capt. Ingersoll.

Q. For what purpose? A. Every purpose—building warehouses, sills for houses, and every purpose for which we could sell it.

Q. Did the Government allow you to haul your timber out with theirs for half a mile? A. We had to keep our timber separated; they allowed us every privilege we wanted.

Q. Didn't your timber mix with theirs? A. Not much.

Q. Were you not some distance from the pier? A. We generally left the raft every night and always came down to the pier. We left it at the pier at night, and to-morrow we would back it down the lake wherever we wanted it—wherever we could get it out handy.

Q. Did you get any out on the pier? A. Yes.

Q. Would these accumultations you speak of, covering up timber, occur in a single night? A. I don't know that it did. I only noticed, when we got hindered so. We worked it as long as we could, and the lake got rough and it would hinder us four, or five, or six days; then I noticed it.

Q. Were there any blows there to hinder you before the last of

October or first of November? A. Yes, sir, there were blows there to hinder us in August or September; there is hardly any time, without it is June, when there are not blows to hinder in getting out timber without getting wet.

Q. Do you remember them distinctly? A. Yes.

Q. You differ with Capt. Allen, who says it was very quiet? A. The water would splatter all over us; in October it was more so and cold.

Q. Were the men at work then on the pier when this wind was blowing? A. They were at work, I suppose.

Q. Where? A. On the pier, if at all.

Q. How much was the pier above water then? A. Some of it was above water one timber, some level, some two timbers.

Q. You say they worked if there was a blow on the pier? A. Yes, sir, they could work on it. When it would be a blow out at the end of a pier, five hundred or six hundred feet out, it would be still, in back, as any place.

Q. Then would it not be still on shore? A. There's where the storm is.

Q. Would it not effect it along the pier between the east and west end? A. Very little. It would be still in the river and within two hundred or three hundred feet of the end of the pier; but you couldn't go out on the beach at the water's edge, or at the end of the pier.

Q. It didn't increase any before you left, did it? A. Yes, it increased along in '34.

Q. How much? A. I guess about one-third of the distance of the pier—about two hundred feet say.

Q. When did it begin to increase? A. I can't fix the time. I don't know; then they began to work on the pier. I guess it was may be in August, '34.

Q. How much did it increase in August? A. I don't know.

Q. How much in September and October? A. I didn't measure it. I only know it increased.

Q. Can you say how much it increased in '35 and '36? A. I say one year from the time I came to the pier and noticed, I supposed it increased, to say the least, two hundred feet.

Q. Do you suppose from the time the pier was first put down it must have increased in one year two hundred feet? A. Yes, we went down once and examined it, and had a discussion, and concluded it had increased two hundred feet by pacing it.

Q. When was that? A. That was in '35—may be in March.

Q. How was the weather in 1835? A. The weather was pretty good.

Q. Wasn't you driving stage when I came here in the fall of '34 and in the winter of '35? A. I drove a stage.

Q. I passed down with you several times? A. Yes.

Q. And have been acquainted with you ever since? A. Yes.

Q. Don't you remember that in '35 there was a tremendous storm, and the cold weather lasted until April or May? A. No, sir, it was not worse in March than at other times.

Q. Don't you know that when the Legislature adjourned the ice was ten or twelve inches thick in the lake and canal, and they blowed up a number of members for opposing the Canal Bill? A. I don't know.

Q. You know there was a great excitement about the Canal Bill? A. I know there was some feeling.

Q. You know there was a public meeting, and some of the individuals were blown up there when the ice was twenty-eight or twenty-nine inches thick? A. I know the circumstance of ice.

Mr. Fuller.—The blowing up must have been imaginary? A. I don't remember the date.

Q. You know there was a circumstance of that kind? A. I remember the circumstance.

Q. Was not that long after the Legislature had adjourned, and the members came home, and the gentlemen from Chicago had got home? A. I don't know what time the Legislature adjourned.

Q. In '36 did you notice the increase? A. No, sir, not much, only as I used to be down there once in a while, on Sundays and other days. I was here in '36 a good deal of the time, but not steady.

Q. You went down about as much one time as another after you left the lake shore? A. No, sir, I moved away a year to Chillicothe in 1836—about all the time I was there—

Q. Didn't you state on a former trial that you were here from '35 to '49? A. Yes, sir. I was all the time, except when I was gone.

Q. Do you really know anything about the accretions at all? A. I know that the accretions from the time they commenced working on the pier for a year were that much.

Q. Do you know how much it was in the fall of '35? A. As I stated before, it was about two hundred feet.

Q. How much in the fall of '36? A. I don't know, I wasn't here to notice it that year.

Q. How much in the fall of '37? A. I didn't notice it.

Q. Were you not living here, and wasn't you Street Commissioner in '39? A. No, sir, not until '43.

Q. How much had it increased then? A. I don't know that my attention was called to it ever after I was engaged there.

Q. After '35 your attention was not called to it? A. No, sir, my business didn't call me there so much to know it.

Q. Did you notice the carrying away of the sand-bar south of the pier? A. Yes, sir, I did. I was to work there.

Q. When was that carried away? A. That was carried away all the time, from the time I first came to Chicago.

Q. Didn't that go off in '38 in one night, or one blow? A. I heard them testify it went off so, but it was not my experience.

Q. Were not houses there until '38 or '39, and didn't it disappear, houses, sand, and all? A. That is not my recollection. I think the house went off about '37 or '38.

Q. Were they not on the sand-bar? A. Yes, sir, they were on the bar.

Q. When the water went over that bar it would have taken the house? A. It would have washed around the houses, of course. It might not have carried them off.

Q. How can you remember better about the north pier than this sand-bar? A. I can remember on the north pier when I was at work. I worked there half my time and then I remember something about it.

Q. You recollect there was a blow when the timber was hauled up, and the sand blew up and covered portions of it? A. Yes.

Q. That's all you know? A. No, sir, I have had it covered up when it was drawn right along side of the pier, or nearly to the pier.

Q. When these timbers were drawn away, wouldn't sand wash up on the shore? A. I don't know.

Q. Was not the water always deeper right at the shore than at any other point? A. I should think it was always after a blow, but as a general thing I don't know that I noticed much about it.

Q. You think in the fall of '34 the water run up around that pier? A. That I couldn't testify to.

Q. Then what frightened the men? A. Men putting out cribs are always frightened, because the storms are so strong on the lakes.

Q. Didn't you say they were afraid of losing this portion of the pier? A. Yes, they were afraid of losing the end of the pier.

Q. Why should they be afraid if it was two hundred feet out when you left? A. They were afraid because it was not well secured.

Q. Didn't you hear them talking about the danger of the west end of the pier being carried away when you left there? A. I don't want to testify about that; I have heard it talked about a good deal.

Q. Didn't the fact exist that the water was running around there, and they were afraid of losing their cribs there? A. I believe that was the fact.

Q. Wouldn't the effect of the storm be to pile the sand up around the piles and make it more substantial and secure? A. Yes, sir, certainly it would.

Direct examination resumed by Mr. Fuller.

Q. Do you recollect who were with you in February or March,

'35, when you were measuring off the new land? A. I remember some. There was a man named Brown, now in Milwaukee, I think, and Captain Ingersoll.

Q. Where is Captain Ingersoll? A. He is dead. A man by the name of Chase, that Capt. Ingersoll employed.

Q. Where is he? A. I don't know. I havn't seen him for fifteen years, I guess.

Q. Did this driving of water over the west end of the pier occur at any other time than during a storm? A. I don't know any thing about that. I was not employed on the pier. I know it only from conversation. I don't know that I stopped at the west end of the pier. My business didn't call me there.

Mr. Arnold—You don't know whether there was any channel or not? A. I don't know. I was at work for Capt. Ingersoll.

Q. You drove the oxen and hitched on the chains that hauled the timber on shore? A. Yes, when I hadn't men with me I did. I generally had three or four men with me.

Q. Did you yourself do the work of digging this timber out of the sand? A. To a certain extent I did. I generally did my part when I was at work.

HIRAM HUGUNIN, called by the defendants, being duly sworn was examined in chief by Mr. Fuller, and testified as follows:

Q. Captain you came to Chicago at a very early day? A. I did: I was here in 1821.

Q. Were you here in '33? A. Yes, sir, I was here again in '34.

Q. What time did you come? A. I arrived here June 11, '34. In '34 I came in a schooner.

Q. Where did you land? A. My vessel lay at anchor, and my boat came in at the mouth.

Q. Did you come in at the lower mouth? A. No, sir, not before I did in '34. I came in next to the south pier in 1834.

Q. How long did you remain here at the time you arrived in June, '34? A. I have been from that time until the present a resident of Waukegan and this vicinity; not all the time in the city, but some time on the canal, and part of the time at Waukegan.

Q. Did you observe the building of the north pier? A. Yes, sir, somewhat.

Q. Tell the jury, Captain, how often you were down and about on that work? A. In the year '34, in July, I became a contractor for furnishing stone for that pier. My preparations were completed, and I commenced delivering stone in August; and from August, '34, and all of '35, I was a contractor, and all that time I was there. Every day that stone were deliverable, with the exception of Sundays. Every time my scows came down I was there, and delivered stone, with, perhaps, a very few exceptions. I made a point when my scows came down in squads of two or three to go down and

see to the delivery of stone. I was there very near daily, and sometimes two or three times a day.

Q. Did you know Lieut. Allen? A. I did.

Q. Was your attention at any time called to the making of land north of the pier? A. It was not called to it. My attention was self-directed to it. I observed it.

Q. When? A. Perhaps I observed it somewhat the first year. I became a contractor in the fall.

Q. You saw the sand commence to form? A. Yes, I remember it still more distinctly the next year, '35.

Q. Describe it fully. A. Well, sir, for adequate reasons, the northerly winds aggregated sands there more than any other kind of winds, and when it blew hardest, the sand accumulated fastest. When it commenced to form manifestly I can't say, or that I observed it to commence at the exact moment of the commencement of the pier; but after they had gone on, and as the pier progressed, it went on; of that I have a very strong consciousness; how far it progressed the first season I am unable to say, but the next year, up to August, '35, I should think it had accumulated to the extent of two hundred and fifty or three hundred feet.

Q. When you measure that, from what point on the west are you measuring? A. From where the sand-beach originally was, and where we commenced to run it out into the lake on the sand-beach.

Cross-examined by Mr. Arnold.

Q. Where was that original sand-beach, Captain? I really don't know how I am to describe it.

Q. Where was it with reference to the angle in the north pier? A. According to my recolleetion now, where the bend in the north pier is, was some thirty rods this side of the angle; but I have no very distinct recollection of where the angle is. The original shore, according to my recollection, was east of the angle some thirty rods.

Mr. Van Arman—Do you know where the angle is? A. No, sir, I don't know.

Q. There is an angle near what is called Shapley's pile—Do you know where it is? A. No, sir, I don't know where it is. That has escaped me entirely. I know where that pile is.

Q. Where was the original lake shore with reference to that pile? A. According to my best recollection, I could hardly designate it nearer than that identical pile. I think it was about that place. My attention was called to it four or five years ago, and they asked me to tax my recollection of where the old lake shore was. My recollection is not distinct or positive; but according to my recollection, I shall place it at about that pile, that is, the shore of August, '35.

Q. How many feet west of that did they begin laying the cribs? A. That is the very point, I think. At the commencement of the

pier, I think was where they commenced to lay the cribs, at that point where the lake shore was. That, according to my recollection, was in the year that I became a contractor.

Q. How long were you engaged in bringing stone? A. From August '34, and all of '35.

Q. How near upon the south side of the pier did the water of the river come—how near to the pier did it approach? A. Quite to it, at that point where the north pier commenced.

Q. Was the original sand-bar west of a line drawn from Shapley's pile south? A. Yes, sir, there was a sand-bar; there was an opening there.

Q. You don't understand me. Did the sand-bar originally cross the place where the pier now is at a point west of Shapley's pile? A. Yes.

Q. Was any of this sand-bar left against the north pier in '34, or had it gone out? A. The water had gone out, and it had come close up to the pier.

Q. Are you positive? A. No, sir.

Q. Some witnesses speak of drawing a seine out directly south of the north pier? A. That is different from my recollection, but I want you to understand that it might have been so in the spring. I didn't come until June 11, and didn't become a contractor until August.

Q. Do you remember the original bed of the river filling up and becoming closed in the summer of 1834? A. No, sir, I do not. My recollection is that it is otherwise.

Q. How wide was the channel of the river in '34, to where it passed out into the lake? A. When I commenced to deliver stone, the channel was perhaps three rods wide.

Q. What is the distance between the piers? A. Two hundred feet, I believe.

Q. Where were these three rods of water? A. The channel of water perhaps flowed out of the river very nearly equal to the width of the present harbor, but the channel permitting me to go out, I think, was contracted at the beach on both sides.

Q. Then your idea is that this three rods was in the centre? A. Yes.

Q. It didn't hug the south pier? A. No, sir. There was no south pier—not extended into the lake.

Q. Was there across the sand bar? A. Yes, sir.

Q Your idea is that the water passed out midway? A. My present impression is that there was low sand between the two piers on either side, and the channel was in the middle. That is my recollection.

Q. You may be mistaken? A. Yes.

Q. You are as likely to be mistaken in regard to that as in regard to the question of accretion; or are you as likely to be mistaken

in that as you are in this? A. Yes, sir, I am likely to be mistaken. It is a matter of opinion.

Q. It is a long time ago? A. Yes.

Q. You are as likely to be mistaken about the one as the other? A. No, sir, I can't be mistaken about the accretion, I think.

Q. But about the extent of it? A. Oh, about the extent of it—yes.

Q. No doubt there was an accretion, but you may be mistaken as to the extent of it? A. Yes.

Q. Do you remember in '34 or '35, of the water running through from the lake to the river, west of the west end of the pier, or in that neighborhood? A. I do recollect one such instance. That was October 4th, 1836.

Q. May you not be mistaken about that? A. No, sir, I am quite confident I am not mistaken.

Q. If it ran through in '34 or '35, it was at a different time? A. Yes, sir. It may have done so at another time, and I not know it.

Q. You are sure it did in '36? A. Yes, sir, I think I am, because there was an extraordinary gale of wind, and it was my business to be out there to aid vessels to come in. Four or five vessels were lost on the 4th of October, '36.

Q. What vessels? A. The Martin Van Buren; she was assigned to me—she was surrendered to me, because I had a policy upon her as the agent of the Northwestern Insurance Company; and the General Harrison—she went around and sunk behind the south pier; and there was another vessel lost in that blow—she was assigned to me.

Q. Did any go ashore on the north pier? A. No, sir. At that time the lake came around and passed the west end of the north pier for a short period.

Q. How long? A. I should think not over two or three hours.

Q. What effect did it have on the sand? A. Why, it washed away a little sand into the river.

Q. The pier was solid; filled with stone, was it not? A. No, sir, not filled with stone.

Q. It was filled with stone to the top of the water? A. Yes, sir.

Q. Then the pier was three or four feet above the water? A. Yes.

Q. Were the timbers of this three or four feet of the north pier placed solid and tight together? A. Yes, and planked over on the top with three or four inch plank, with spaces between them. I believe they were on top of the pier.

Q. Then the water couldn't pass through the timbers of the pier on the north side because they were tight? A. Yes.

Q. Did it pass through west of the west end, or over the top of

the pier, or both? A. It didn't pass over the top. It passed around the west end.

Q. How much of a channel did it cut through? A. Very slight. I wouldn't be positive that I saw the water go through at all. I think my attention was only called to it the next day. When I commenced to relate the story, my impression was that perhaps I saw it. On further reflection, I think may be I was mistaken, but I am not sure. I rather think now that I didn't see it until the next day, and judged by the appearance next day of the channel.

Q. Can you describe the size of the channel? A. No, sir, perhaps there was no channel cut through.

Q. I thought you said it had cut through? A. It might have passed through without a channel. I think it passed away from a declivity; from the summit of that declivity it was, perhaps, ten or twenty feet back. You are talking about the channel between the lake and the crib, are you not?

Q. You stated that you thought you saw it run through, but upon reflection concluded that you had thought it run through from the appearance west of the west end of the pier; what was that appearance? A. The sand had been cut away slightly.

Q. Do you remember how that space was filled up? A. No, sir.

Q. Were timbers and stone put in there? A. I know a pier was built along there that wasn't there at the time the water went around.

Q. Did they not immediately fill it up with timbers and stone where it was cut out to make a protection? A. I can't say. I did not see them do it.

Q. Do you remember that it was a subject of a good deal of anxiety to the persons engaged on the pier? A. I remember talking myself with some persons who expressed some apprehensions at times.

Q. You don't remember of its cutting through there at any other time than this one that you speak of? A. No, sir, I have no recollection of its having cut through there at any other time.

Q. Captain Allen had charge? A. Lieut. Allen had. I believe he was not captain until after he left here. If he was I didn't know it. I think he was made captain after he was attached to the Rifles.

Q. How many years was he here? A. Three years, I think.

Q. Do you recollect that he made plans and drawings representing the accretions there? A. No, sir, I don't know whether he did or not.

Q. Did he make measurements and soundings? A. I don't know that he did.

Q. Were your contracts with him for a supply of stone? A. Yes, sir.

Q. If you found your recollection of the extent of the accretion should differ from the representation of Capt. Allen, which would you think entitled to the most consideration; his observations made at the time, or your memory at this distance of time—which do you think would be most reliable?

Objected to. Objection overruled. Defendants' counsel excepted.

Q. State Captain—supposing Capt. Allen to have made a drawing of the extent of the accretion at the time, he having charge of the work, and these drawings reported by him should differ from your recollection, which do you think would be entitled to the most consideration? A. Were these drawings and this report made with express reference to the accretion?

Q. Yes, and the building of the pier? A. Then the questions resolves itself into this: whether I may not be mistaken and Capt. Allen right.

Q. Yes, and which would be most likely to be mistaken? A. I must answer it in this manner. It is rather a difficult question.

Q. You find it difficult? A. Yes, sir, my recollection is quite positive as to an accretion there, but as to its extent, I might vary some from its actuality. Mr. Allen, if he made it with reference to the accretion, would perhaps get nearer to the facts than myself; but if Mr. Allen and ten other men should state that there was no accretion, I should say that they were all wrong, and when my memory is so clear I wouldn't give it up to any man's memory on that subject or any other.

THE COURT.—You rely upon your own memory in testifying? A. Yes, I must do so.

Q. Captain Allen is not living? A. I have understood not, sir.

Direct examination resumed by Mr. FULLER.

Q. Capt. Hugunin—wasn't that storm of Oct. 4, 1836, a very heavy one? A. A very heavy one.

Q. Didn't it drive the water over a great deal of firm land in that part of the town? A. Yes, and where I have never seen water before. It submerged a great deal of land ordinarily dry.

Q. Do you recollect that slough coming down from near Lill's brewery towards where this water broke over? A. I do, and water standing in it, usually.

Q. Tell whether this breach into the river was not about opposite that marsh? A. All that I saw of the washing, as it appears to me, wasn't over three rods from the immediate rapid descent into the creek from above. Where it pitched down into the creek there was an abrasion, or sand washed away.

Q. Do you recollect whether that point of abrasion was about opposite the slough? A. No, sir, it was not opposite the slough; it was further west. The water from the lake must have come through the slough to get to it.

Second cross-examination by Mr. Arnold.

Q. Did the water which passed through this break come from up by Lill's brewery, or did it come up against the pier and run up and pass out? A. It didn't run up by the pier. I didn't see any evidence of it, and don't see how it could have done so. It was not the lowest place, and I should conclude that water would run to the lowest place.

Q. With reference to this Shapley pile, what was the direction of the shore north of that? A. I should think, according to my recollection, it formed a gradual curve there; and the line of direction from where the pier was commenced was about north-east,—that is at the time of the commencement of the pier.

Q. And before that time? A. Yes.

Q. There was no material change? A. No, sir; it is to be recollected that I came here in June, and the pier was already in process of construction. It had been run out three or four rods before I became a contractor; but I was frequently there, and I have a recollection of it.

Q. In June, '34, you say it had been run out three or four rods? A. Yes, sir; only at the surface of the water—two or three cribs.

Q. You are positive of that? A. Quite positive.

Q. As positive as to any fact you have testified to? A. No, sir.

Q. Are you positive you got here in June? A. Yes, from the recollection that I started for this place from the east on the 11th of May, and arrived here in just a month.

Q. You came into the river? A. We came up in a yawl boat.

Q. Have you a recollection of seeing a portion of the north pier when you came up? A. No, sir, not until I became a contractor and went to work as a contractor. After I became a contractor, which was in July, I took something like a month to get my fixtures, scows and appurtenances ready.

Q. How much was constructed when you came here? A. I should think none at all.

Q. Just now you stated two or three rods? A. I had reference to the time when I commenced to work in the fore-part of August in that year.

Q. You didn't begin in July? A. No, sir.

Third direct examination by Mr. Fuller.

Q. State how much accretion was made within a year, from the west end of the pier, adjoining the shore, as it was in August, 1834, wherever that might be? A. I think I commenced from the original shore. This must be taken into consideration: at the time I commenced there, I have said and I will repeat it as my recollection, the pier was run out about four rods into the lake from the original shore, but only just above water. Then, when I began, it was not only run out further, but we began back a

the original shore and raised it higher, and I filled in there. So that from where I commenced, being one hundred feet to the beach, it extended in one year, which would be to August, 1835, I should think, one hundred and fifty feet. That is from the point to which it was extended out at the time I commenced. Just at the surface of the water it extended out that far.

Q. You know where Shapley's pile is? A. Yes, my attention was called to a pile then called "Shapley's pile."

Q. How near was that to the point where you begun? A. About one hundred feet, perhaps, west of the point where I began to build at. But you must remember I had to go over this that was already built, and raise it higher and complete it.

Third cross-examination by Mr. Arnold.

Q. You didn't see the north pier begun, but when you began there were three or four rods built? A. When my contract commenced, there were three or four rods extended out.

Q. You supposed it was begun at what you supposed to be the original lake shore? A. Yes.

Q. From that place where you think the original shore was, you think the accretion was two hundred feet by the fall of '35? A. Yes, sir, two hundred to two hundred and fifty, but my recollection is vague on this subject.

Q. If you are mistaken in your starting point where the original shore was, that would lead you into an error with regard to the extent of the accretion? A. Yes, I think it possible. I think I know where the original shore was, before and after.

COURT—How far did the accretion extend eastward from the western extremity of the pier in the summer of '35? A. By the west end of the pier the Court signifies that part of the pier which was built in the lake?

COURT—Yes, sir, where the pier and the shore then joined. A. That question I have answered.

Q. Will you just repeat it? A. I have said that I thought the original shore was very near that point called "the Shapley pile." From that pile, all east of it I call accretion. According to my best recollection, and I have given it all the thought I can—my impression is that accretion in the fall of '35 was from two hundred to two hundred and fifty feet.

WILLIAM H. SKINNER called by the defendants, being duly sworn, was examined in chief by Mr. Lincoln, and testified as follows:

Q. How long have you been acquainted here in this vicinity? A. I came here about the 10th of July, 1834.

Q. Do you remember when the north pier of Chicago harbor was begun? A. I do.

Q. Did you have something to do with it? A. Yes, sir, I had

charge of the framing of the timbers, and the sinking them in pier.

Q. A certain part of that pier, I suppose, was so placed down as to form an angle with the lake shore? A. I think it did.

Q. Do you know whether there was any firm land in that angle, between the time that the pier was put down there and October, 1835? A. I do.

Q. How many feet out upon the pier from that junction of the pier and shore when they first put it down, had that made land accumulated by October, '35? A. Well, from four to six hundred feet.

Q. That was from the point where the shore and the pier joined when they were first joined together? A. Yes, sir.

Cross-examined by Mr. Arnold.

Q. You say you came here in June '35? A. No, sir, in July.

Q. Are you sure about that? A. Yes.

Q. You left in September, '35? A. Yes, sir, somewhere along there, September or October.

Q. September is what you have always said? A. September or October, I said before.

Q. Where do you live now? A. In Milwaukee.

Q. What is your occupation? A. I am a farmer, sir, at present.

Q. Do you know the crib where a pile called Shapley's pile is driven? A. I believe it has been pointed out to me on the former trial.

Q. How far is it from an angle in the north pier? A. I don't know how far. It might be fifty or one or two hundred feet. I don't know; I never measured it.

Q. Have you testified in regard to that Shapley's pile before? A. I don't know that I did.

Q. Don't remember that you did? A. No, sir, I don't remember.

Mr. Van Arman objected to questions in regard to what the witness had said on a former trial. Objection overruled; defendants' counsel excepted.

Q. Did you testify on the last trial in '53 in regard to that Shapley pile? A. I might have testified about it; I don't know.

Q. Did you state that the crib in which the Shapley pile was driven tipped to the west? A. I think I may have stated that there was a crib tipped to the west.

Q. In which the Shapley pile was driven? A. That's what they said.

Q. You now remember it? A. Yes, I do.

Q. How far from that crib was the old lake shore, according to your recollection? A. It must have been as much as one hundred feet, may be more. It was east.

Q. Was that the distance you stated on the other trial? A. I

think I stated on the other trial something like one hundred and eighty feet from the end of the pier.

Q. Have you changed that now a hundred feet? A. No, sir.

Q. Have you changed your recollection? A. No, sir.

Q. Why do you answer now one hundred feet and then one hundred and eighty feet? A. I said one hundred feet from the Shapley pile—that is eighty feet from the crib, at the bend of the pier.

Q. Didn't you testify in regard to a particular crib in which the Shapley pile was driven, and didn't you just now say you did? A. No, sir, I didn't say I did—not one particular crib.

Q Didn't you just now speak of a crib that tipped to the west in which the Shapley pile was driven? A. Yes.

Q. Do you wish to change that statement? A. No, sir.

Q. How far from that crib was the old lake shore? A. I answered you before about one hundred feet.

Q. Didn't you testify on the other trial one hundred and eighty feet? A. No, sir, I didn't.

Q. From what point did you say? A. The elbow or bend in the pier. The bank of the river, as I call it. The east bank, or north shore.

Q. What bend? A. A bend in the pier where it joined the river, on the east side of the river and the west side of the old sand-bar.

Q. How far was it across that sand-bar at that time? A. About one hundred and eighty feet across to the lake shore at that time.

Q. You say that the old lake shore was one hundred and eighty feet from the angle in the north pier? A. Yes.

Q. Which is in the neighborhood of the Shapley pile? A. Yes, sir, that is my recollection.

Q. From that point at that angle, you say, the old lake shore was one hundred and eighty feet east in '33? A. No, sir, I didn't say so. I said in '34.

Q. You examined Shapley's pile from that angle east one hundred and eighty feet, you say, was across the old sand-bar? A. Yes.

Q. Are you positive about that? A. Yes, I should think that would be across the sand bar to the lake.

Q. You are positive that sand bar was there? A. Yes.

Q. Are you as positive of that as you are of these accretions? A. Yes, sir.

Q. Why are you so positive? A. I commenced to work myself, and laid the pier on the shore, and worked back one hundred and eighty feet to the angle. That's the reason why I know.

Q. You commenced at the lake shore and worked back one hundred and eighty feet across the sand bar? A. Yes, sir.

Q. That was the first work done? A. No, sir, the first work

done was sinking that crib on the lake shore, and then extending it east into the lake. It was extended further east into the lake.

Q. Where was the first work done? A. On the shore of the lake.

Q. Were you there when that was done? A. I guess I was.

Q. A crib was put in? A. Yes.

Q. Part resting on the shore and part in the water? A. Yes.

Q. Was a pile driven in that first crib? A. Yes, with a horse pile-driver. It was on the northeast corner; there were three of them driven, two on the south side, and one on the north.

Q. How far east did you work into the lake then? A. We went seven hundred or eight hundred feet.

Q. You say that point was one hundred and eighty feet east of the bend in the north pier? A. Yes.

Q. You are positive of that? A. I am positive I worked west from it about one hundred and eighty feet—west from this crib to the angle across the sand bar.

Q. When? A. In the fall of '34.

Q. What sort of a construction did you put in there? A. The same as into the lake.

Q. How did you put it in? A. By excavating a piece and putting it down, probably about a foot under the surface of the water.

Q. Did you drive any piles in it? A. No, sir, not then.

Q. Did you drive any in that part which laid on the sand at all? A. No, sir.

Q. Did you ever? A. Not myself.

Q. Did you know of any being driven? A. No, sir, I didn't see them.

Q. When you go down and find the place where the piles were driven eastward, and find that it is not one hundred feet from the bend, but only twenty-two feet, how do you account for that? A. I couldn't find such a distance.

Q. [Presenting Denton's map.] Do you say that the Shapley pile is driven on the sand-bar? A. Certainly, I do.

Q. Eighty feet were of the original lake shore? A. No, sir, I don't say that. I say I don't know.

Q. You say that that bend, which is twenty-two feet there west of the Shapley pile, was one hundred and forty feet west from the old lake shore? A. Yes.

Q. Then the Shapley pile was on the sand-bar? A. Of course, that's my idea.

Q. You say that across the sand-bar there never were any piles driven? A. No, sir, not to my knowledge.

Q. Now, when you find piles driven across what you call the sand-bar every ten feet, how do you account for it? A. This kind of work is made so as to receive piles at any time. It is made for the express purpose of having piles driven.

Q. How long did you work there? A. 'Till the fall of '35.

Q. There were none driven then? A. No, sir.

Q. Were stone put in there? A. There were some thrown up to the top of the water. The water was nearly to the surface of the ground.

Q. How did you drive piles on these stone? A. There were mortices.

Q. You think sometime afterwards they must have been piles driven? A. Yes.

Q, You don't know when? A. No, I should think they were by a floating pile-driver. I presume so from their appearance and size.

Q. Don't you think that you may be mistaken about the one hundred and eighty feet to that Shapley pile, or that angle? A. No, sir, I think not. I can't be mistaken, because I laid so many feet of timber back.

Q. This work west is a different structure? A. It is not so wide.

Q. Why didn't they put piles along west of that angle? A. I don't know, probably they did.

Q, There are none to be found there you say? A. I didn't say so. I am not speaking about west of the angle.

Q. Didn't you say you didn't find any? A. I didn't examine. I didn't do that work. It was put in after I went away.

Q. When you went down there, did you find any piles west of the angle? A. I didn't say anything about west of the angle.

Q. Didn't you? A. Not that I remember of. I think not.

Q. I ask if you found piles, when you went down to look, driven across what you call the sand-bar on both sides of the pier? A. Of course they are there now.

Q. West of that point there are none now? A. I think there are piles driven all along there—why not?

Q. I ask you if there are? A. I think not.

Q. Didn't you and the other witnesses differ, and didn't you say it was built on the sand-bar there, while they put the sand-bar at a different place, and then didn't you go down to see about it.

Objected to. Objection overruled. Defendants' counsel excepted.

Witness—I can't tell what other witnesses swore to.

Q. Wasn't there a difference between you and Shapley and Miller, and didn't you go down there to see about it? A. No, sir, I didn't go down there to see about that.

Q. What for then? A. To satisfy myself about matters and things generally.

Q. You heard their testimony, didn't you? A. I don't know whether I heard their testimony or not. I heard of it afterwards.

Q. Didn't they testify that west of that angle there was not a single pile driven? A. I don't know that they did.

Q. You went down? A. Yes. I don't know that there was any piles there or that there wasn't. I can't say anything about west of that angle.

Q. Do you know of a single pile being driven west of that angle? A. I don't know now.

Q. Did you go to the south shore? A. Yes.

Q. Did you examine it? A. Yes.

Q. What for? A. To look at it to see whether I might not—to see what improvements they had made on it.

Q. Didn't you go there to see whether you might not be mistaken, and didn't you commence to say so just now, and then stop? A. No, sir, I went over to see what was done.

Q. Didn't you go down to see whether you were right or not? A. Well, I was right. I went down to view the harbor.

Q. And to see the old land-marks? A. Yes.

Q. Do you know of a bend in the south pier? A. I think there was one there.

Q. Where was the old shore with reference to that angle? A. Some three hundred feet east of it.

Q. Did you examine to see whether piles were driven three hundred feet east of that? A. I believe they were.

Q. Right where you said the old sand-bar was? A. Yes.

Q. What kind of piles were they? A. They were square piles—large piles I believe.

Q. West of that did you find any piles on the south side? A. I don't know. There were some along there, not many.

Q. Was there a single pile for one hundred and fifty feet? A. I don't know that there was.

Q. When you came to the bed of the river, did you find piles? A. I don't know what you call the bed of the river.

Q. Do you say there was a single pile driven on the south side of the south pier from the angle of the pier, west? A. No, sir.

Q. Not a single pile? A. Not that I remember of.

Q. When you got that distance you found them again? A. Yes, irregularly.

Q. Across what was said by Shapley to be the bed of the river? A. I don't know what Shapley said.

Q. Do you know where he claimed the bed of the river to be? A. Yes, I think it was down there somewhere.

Q. Didn't you and he differ about two hundred or three hundred feet? A. Yes, he claimed to be the sand-bar where I claimed to be the bed of the old river.

Q. You are as positive that it was where you claimed it to be, as you are about this accretion? A. Yes.

Q. Are you more positive? A. I am satisfied about it.

Direct examination resumed by Mr. Lincoln.

Q. You answered, and I suppose it is true, that at the time the pier began, (look up at me,) that at the time the pier joined it, it made an angle? A. Yes, sir, of course it did, that angle was formed by—

Q. Just stop—was that a right angle? A. So far as the form is concerned, I am not positive.

Q. Have I correctly understood you to say that after fixing that junction point, you sometime afterwards built the pier back westward further? A. I did, sir.

Q. How far back did you build? A. About one hundred and eighty feet westward.

Q. Westward from where the shore and the pier when it was first put in, made the angle? A. Yes, sir.

Q. It is about one hundred and eighty feet back to where you locate what is called the angle in the pier—the angle in the pier being one thing, and the junction of the pier with the shore forming an angle, being another? A. Yes, sir, those are the two points, one hundred and eighty feet apart.

Q. And the amount of the accretion that you stated to me in your first examination, was from where the pier, when it was first put in, joined the shore? A. Yes.

Second cross-examination by Mr. Arnold.

Q. Now look up at me, and answer me. You say you built the pier westward one hundred and eighty feet. Where did you start from with reference to Shapley's pile? A. I can't locate Shapley's pile exactly. I think it was about one hundred feet east.

Q. And you built westward one hundred and eighty feet? A. Yes.

Q. On the sand? A. Yes, on the sand.

Q. Where, with reference to Shapley's pile, do you commence when you say that the accretion extended out a certain distance? A. I commenced at the shore of the lake as I found it at the time, and put in the first crib. I commence the accretion from that east, without reference to Shapley's pile; I can't locate that.

Q. When did you put in that eighty feet west of the lake shore? A. Along in the fall of '34.

Q. Then the north pier extended in the fall of '34, one hundred and eighty feet west of the original lake shore? A. Yes, the foundation did.

Q. What description of pier was that one hundred and eighty feet you put in in the fall of '34, west of the original lake shore? A. It was the same structure as the pier running east into the lake almost.

Q. Would an ordinary observer notice it? A. No, sir.

Q. When was that leveled up higher? A. I don't know. I went away before it was leveled up.

Q. Were timbers lying along side of that, north of it, on the beach? A. I don't remember that they were. I remember large sand piles there and timbers up further west.

Q. When you speak of a storm driving over and breaking in west of the west end of the north pier, do you mean west of this you built up there? A. I haven't said anything about it here.

Q. I want you to say something about it. Do you know of any storms breaking through there? A. I believe the water did break around there somewhat in '34, along in the fall of the year.

Q. Did it in '36? A. I was not there. It run over in '34 at this first pier that we raised four or five feet high. It run out a great deal there. It come on a blow and the water ran over that. It was excavated fifteen or twenty feet from the lake to receive this western extension. The water, I think, ran over there.

Q. How wide a channel? A. I guess it was not a channel. It was in a blow.

Q. Didn't you say thirty or forty feet on the other trial?

Objected to. Objection overruled. Defendant's counsel excepted. A. No, sir.

Q. How large was it? A. I don't remember any channel. I don't know that it was a channel. It might have washed a little sand in; I don't remember anything of any consequence at all.

Q. Didn't you testify on the other trial that it was forty or fifty feet across it? A. No, sir.

Objected to. Objection overruled; defendant's counsel excepted.

Q. Are you positive of that? A. Yes, I never said so.

Q. How large a channel was the channel as you now remember it? A. I don't know that there was any channel there at all. I don't remember that there was any channel at all after the blow. There was no stream passed in after the storm ran out.

Q. How much of a stream ran into the river during the storm? A. Not much of any. It might have broke over the pier.

Q. Did it break through or around? A. It broke around some—around the west end of the first crib that was put into the lake; into these pits I spoke of.

Q. Did it go into the river? A. I suppose it did. It went into these pits, and they extended to the river.

Q. That was in '34? A. Yes.

Q. Was anything put in to stop it? A. I don't know. I think not.

Q. Wasn't an L crib put in there? A. No, sir, not that I know of.

Q. No timbers or stone? A. I don't know. I hadn't charge of that piece of business.

Q. How deep was the excavation? A. About a foot beneath the water.

Q. How wide? A. Twenty-four feet was the width of our cribs. It might have been a little wider.

Q. Did the water wash through that in a storm? A. It run over there some.

Q. Did it alarm the men constructing it? A. No, sir, not that I know of.

Q. From that point, west, you run a pier one hundred and eighty feet in 1834? A. Yes.

Q. How high did you raise it that fall? A. Three timbers—without any piles being driven.

Q. Did you come back in the fall of '36? A. We did pass through here.

Q. Did you see the water running around? A. I believe there was water running through on the west end; that is, there was a channel, but no water running; probably it blowed over. That was in '36.

Third direct examination by Mr. Lincoln.

Q. Do you mean there was a stream came around that west end when there was no storm, or that the water might drive up on the shore in storms, and just at the end of the pier might get around. How was it? A. That was the fact. In times of a storm, it would break over the pier, but when there was no storm there was no water there.

Q. Was that your observation, that when there was no storm there was no water there? A. Yes.

J. D. WEBSTER re-called by the defendants, was further examined by Mr. Van Arman, and testified as follows:

Q. Captain Webster, state what time your connection with this harbor commenced? A. I believe my official connection with this harbor, or with the works connected with it in one way or another, for any considerable period, commenced in the fall of '48. I was here as the assistant of the General Superintendent of Harbours, as I told you, in '41 or '42—the first I ever saw of it.

Q. In '48, did you also have charge of the other harbors on the lakes? A. Not so early as '48; subsequently I had. I had a specific duty in '48, in reference to other things.

Q. Were you general superintendent, and had you charge of all the harbors several years. A. Yes.

Q. Did you have occasion to visit them in that capacity, from time to time? A. Yes, I did so.

Q. Did you, in inspecting the harbors, in the performance of your duties, have occasion to notice the sand drift on the western lake shore? A. Yes, I have observed the same thing at several different points.

Q. What points? A. Well, the farthest north point which I have seen, to have any connection with it, was Manitowoc; but there have been no piers. At Sheboygan there have been. I have

noticed it at Milwaukee, Racine, Kenosha, at this place, at St. Joseph, and Michigan City.

Q At what point do these accumulations increase most rapidly? A. I think the accumulations are most rapid at this point.

Q. Why? A. I suppose because there is a longer sweep. It abrades the shore at the north, and brings this material along with it; and there is nothing to stop it, except this. At Milwaukee the accumulation is slow, I suppose, because there is a rocky point above—at the North point, as it is called—which, I think, throws it off, and the accumulation is not so rapid. At Racine, my impression is that it is more rapid.

Q. Did you ever watch the rapidity with which land forms by the obstruction of this current? A. I don't know that I ever took very careful notice. I have made surveys from time to time, and noticed these accretions. My recollection about the rapidity is not very distinct.

Q. What is the law that governs these accumulations, the natural principle that regulates them as to rapidity? A. In what respect? They are more rapid in a season of a great many northeast storms, for instance.

Q. Suppose a pier, or obstruction projected into the lake, state all the circumstances in your opinion which would affect the progress of the accretion? A. I should think the number of northerly and northeast storms, occurring in a given period would be the first one; then the angle that the pier made with the shore would be a very important one, and what angle would be most favorable to the rapidity of increase. My impression is, about a right angle would be most favorable; if it sloped more than that away from the prevailing current, more sand would go by; and if it were pointed more in a northeast direction, eddies might form which might wash it out. I think a right angle would perhaps be most favorable. The general direction here has been about a right angle. My impression is that a right angle is as favorable to rapid accumulation as any other.

Q. At what time would you expect the accumulations to be most rapid? A. When the progress of the pier on the line of obstruction was most rapid. I should think it would grow less as the pier made out. When it was nearly out to the end, I should think it would be slower, than at the earlier stages, or at the very first, when the water was low, and the depth comparatively slight and the space smaller. I should expect it would be more rapid then comparatively, than at the earlier stages of the accumulation.

Q. What would be the form of such an accretion with reference to the shore and pier? A. It will have a triangular form as a general rule; one side on the pier, one side on the shore, and the water connecting the third side, and making a triangle.

Q. When such an accretion is forming where would it first

lodge? A. I should expect it to lodge first in the angle between the pier and the shore.

Q. Are you able from your observation to give a scientific opinion as to the probable amount of formation on such a shore as this down here, next to the pier, during the first vear? A. No, sir, that would be a very difficult thing to do from anything but actual observation. I think there would be some accumulation, but I couldn't tell how much.

Q. Can you conceive of any causes which would suspend this accretion for the first year after the pier was put out? A. I think it would go on, if there was a pier, in storms. I don't think it would so much in still weather.

Q. But to suspend it for a year? A. No, sir, I don't think it could be suspended for a year.

Mr. Lincoln.—It would be suspended as long as the storm was suspended? A. Yes, probably.

Q. Have you ever known such a suspension? A. No, sir, I never noticed any. I know there is a difference in the rate of increase

Q. Could it happen that such a suspension should exist or occur according to the law that governs this matter? A. I should think not, sir. I should think during a storm it must go on.

Q. Suppose a year unusually stormy, and the storms are mainly from the north and east? A. In such a year the accumulations would be more rapid with storms from that direction, and with stormy weather in a locality like this.

Q. Suppose that a channel is cut or bursts through this sand-bank out into the lake by a river, as you have heard Chicago river is; and suppose the south pier is constructed to the top of the ground merely, and projected down to the lake, but not into the lake any distance; and suppose the river bursts through between the piers adjacent to the south pier, what would be the effect of the elements, winds and waters on the corner thus exposed to the north, where there was no pier? A. Well, sir, that would be rounded more or less, I should think; but it would be according to the strength of the current running out and the action of the surf from the north. This corner would undoubtedly be beat off at that time—the waves from the N. E. and the current meeting there. If the current was strong enough to carry it out, it would continue to abrade; but if it were not, it would fill up. The effect would depend upon the relative strength of the current.

Q. Suppose the current of the river twelve feet deep and eighty feet wide? A. Then I should think it would abrade that corner somewhat and wear it off. I don't think it would maintain a corner of sand there of any sharpness.

Q. Would you expect such a corner to maintain itself for a year? A. No, sir.

Q. Or six months? A. I should think it would be rounded or abraded.

Q. Suppose (in order to fill all the conditions which the testimony can possibly establish) that the channel of the river should never come as far north as the location of the north pier, but that a channel sixty or eighty feet wide should hug the south pier, for what distance would you expect it to effect the lake shore line on the other side? A. That would be due to the amount of the storms and the activity of this current coming out. I couldn't say how far it would effect it. It would effect it northward to a greater or less distance, according to the force of the storms that might occur, I think.

Q. What is the immediate cause of these abrasions? Is it the eddies? A. No, sir, I think it is the surf beating upon it from the N. E.

Q. Then if the current was strong enough to carry it out, it would continue to abrade, otherwise it would be drifted into the current and stop it up? A. Yes, as long as this current was strong enough, it would abrade.

Q. Suppose the two forces to be equal? A. Then the material would be carried off in a line between the two forces. If the two forces were even, it would carry off the accumulation in a line between them.

Q. You know the original form of the Chicago river, turning south? A. Yes, sir, from accounts.

Q. Suppose that after the south pier was built, the river should burst through north of the south pier in a heavy freshet, what would be the effect of such a cause on the angle formed by the new and old channel on the north side of the river—the angle on the east side of the river? A. I should think, if this is correctly laid down [taking Greeley's Map, No. 2], it would tend to abrade that and make the east bend of the river further east. It would make this the same as the other [illustrating by the map]; but that is by action of the river directly

Q. When this freshet came out it might carry that further off and make it further east? A. Yes, it might.

Q. The effect would be in proportion to the cause? A. Yes. This would be due solely to the strength of the current of the river.

Cross-examined Mr. Wills.

Q. Suppose an artificial channel cut through here, and this one stopped up so that it would only be forty feet wide, as the engineer on duty says, what would be the effect upon that corner, away up there? A. I don't know how far that would affect it.

Q. Couldn't the whole effect that you have been attributing to the action of the water upon that corner, be manifested upon this corner down here within the pier? A. That would depend, as I said before, upon the amount and strength of that current. I say the corner there would wear off, but I cannot say how far.

Q. But the distance is two hundred feet from the south pier to the location of the north pier, and the channel adjacent to the south pier is only forty feet wide; then is there one hundred and sixty feet to be worn off inside of the piers, and also the hypothenuse of that triangle washed off inside? A. Yes, I didn't express any opinion except that the corner up here, wherever it would be, would be worn off.

Q. Is there a current running down the western shore of Lake Michigan southwards? A. Yes, sir, there is.

Q. That is at all times? A. It sometimes exists in smooth weather, but ordinarily, I suppose, it is created by storms.

Q. What is the degree of rapidity with which that current flows southward? A. Well, I don't know, sir.

Q. Give its ordinary and extraordinary rates. A. It is a difficult thing to ascertain the rates. I have thrown in chips and things of that kind that would float, to observe it during the prevalence of storms, and should think the rate was three and a-half to four miles per hour. I don't know; it is a difficult thing to see, because anything you throw in is thrown about by the surface, and it is difficult to estimate the rate of speed southward.

Q. When a river is flowing out with an inclination towards the south, do you know of any cause to turn it north, particularly when it is encountering this current of three or four miles an hour? A. I can conceive of such a thing.

Q. Is it a probable circumstance that such a river would thus change its direction? A. Not unless it met some deflecting cause.

Q. Wouldn't the tendency of this current south be to carry it off south instead of north? A. Yes, if the two currents were acting at the same time.

Q. The tendency would be to carry it southward instead of northward? A. Yes, it might be deflected.

Q. If it were turned northward, would the wind drive it right back? A. That depends upon the relative strength of the two currents. If the northern current was the strongest, it would throw it in. If the stream inside was the strongest, it would throw it out.

Q. Is there any subject more difficult than this of shores—hydraulics? A. It is pretty difficult.

Q. Do you think your statements with reference to the accretions on the north pier are as worthy of consideration as the statements of the engineer on duty here at the time, as to the amount of accretion? A. I make my statement only as reasoning upon general principles. I know nothing about these facts. I came here in '42.

Q. You had charge in '49 and '50? A. Yes.

Q. Suppose the engineer on duty should make a statement to the Government, with the representation of the amount of the ac-

cretion during these years, would you not regard it as of more weight than any theory you might form?

Objected to. Objection overruled. Defendants' counsel excepted.

Witness—It would not shake my opinion on the general principle. If the officer in charge stated that there was no accumulation at the time, I should think it was very strange, and should study it to find out the circumstances from which a principle usually operative, had not operated at that time.

Q. Suppose he stated that there were accumulations, but differed with you as to their extent, which would you prefer, his statement of facts or your theory?

Objected to. Objection overruled. Defendants' counsel excepted.

Witness—Of course I know the difference between the character of the statement of an officer, reporting officially and any opinion arising from the action of general principles. I have stated that it is difficult to fix it nicely; but I state also with a great deal of confidence, that these accumulations would go on.

Mr. Arnold—More or less? A. Well, yes.

Q. You say in general the accumulations would be more rapid at first than towards the close? A. Yes.

Q. You stated yesterday the longer the pier was the more rapid the accretion, and that the shorter the pier was the less the accretion? A. Yes, the more passes by.

Q. That is what I understand you to say now? A. Yes, I mean the same thing.

Q. You don't pretend to say it would be more the very first or second year? A. The storms being equal, I say it would be more rapid the first year. Other things being equal, I think it would be more rapid during the first years.

Q. The very first year, or the years succeeding the first and second years? A. My impression would be that from the time the pier was put in in the first year, there would be more accumulation than in any other year. When you went out to where it felt the effect of other causes, it would be different.

Q. Is the effect in storms to pile up sand in that position? A. Yes, that is the effect. I know an instance in Milwaukee where it didn't accumulate, but it broke through a barrier that I didn't think it possible to break through, and carried it into the river.

Q. Don't storms carry away as fast as they pile up? A. I know they pile up sometimes, and carry away sometimes.

Q. Don't they as frequently carry away as deposit on this bar? A. No, sir, not these accretions that you are talking about.

Q. You have seen Col. Graham's map? A. Yes.

Q. [Presenting Graham's Map.] Look at these shore lines and and see whether he don't show that it varies? A. Yes, there is a

condition where a great bulk of the sand goes by and does not stop. There is a condition, I think, under which, I think, the greater portion of it passes by, and it has stopped forming for several years. This, I think, has made very slowly, if any, for several years. In that case, with a certain direction of the wind, it might affect that shore.

Q. Is not the effect of that pier to cause a deposit of sand under water as well as upon the shore? A. Yes, sir. It takes place under water, I presume, in this shoal past here.

Q. From year to year doesn't the deep water here become more shallow until it eventually comes up out of water? A. Yes, sir, I suppose the whole surface rises on the general slope which the sand assumes under the action of the water. It is deposited away out here, all around here, every year. [Illustrating by the map.]

Q. From your knowledge of the western shore here, state whether there are bars parallel with the shore in the original condition of things? A. Yes, I recollect one at Milwaukee parallel with the shore. We extended the north pier over that bar. There was a portion built when I found it, but this bar lay outside, parallel with the shore. We extended it over that. I think I have noticed it in soundings at other places. The idea of a bar parallel with the shore is very familiar to me.

Q. You can't state whether there was any bar opposite here originally? A. No, sir, not from my own knowledge. I have no doubt there was, but I can't state it.

Judge Morris—How far apart are these piers? A. Two hundred feet I believe.

Direct examination resumed by Mr. Van Arman.

Q. With reference to the credit of an engineer—suppose you saw a report which stated that a pier had been carried out into this very current, nearly at right angles with the shore, and that for the first year thereafter but very slight accumulations of sand had been observed; that the next year there was a much larger accumulation, and the third, fourth, and fifth years a great deal more in proportion than the first—would not that excite a great deal of inquiry on your part as to the causes? A. Yes, sir, it would surprise me somewhat, I think.

Q. Would you not expect that to be reversed, and the accumulations to be the greatest in the first and second, and less in the third and fourth years? A. Yes, sir, I think what I have already stated would imply that.

Second-cross-examination by Mr. Arnold.

Q. Assuming such a state of facts, would you find a satisfactory explanation, if you learned, upon inquiry, that during that first year the channel was a narrow one, hugging the south pier, and a portion of it was filled by the sand blowing in, while the water discharged itself in this original channel? A. No, sir, I think

that wouldn't influence it at all, I think the accumulation would be just the same, so far as the north side is concerned.

Q. If between the new mouth of the river and the lake shore at the location of the north pier, there was one hundred and eighty feet of sand, it would not effect the lake shore until that had disappeared? A. The action of the river has nothing to do with the action of the lake on the north side of the pier.

Mr. Van Arman —Would the closing up of the mouth of the river, subsequent to the erection of the pier, at all affect the extent of the accumulation north of the pier? A. No, sir.

Mr. V.—That would furnish no explanation at all of the difficulty I have supposed in the report? A. No, sir.

Mr. Arnold.—Suppose the north pier had been raised to the surface of the ground, or a few inches above, and the top of the pier was open, would the accumulation against it be as rapid? A. Probably not.

Q. It would pass over into the river, or inside of it here? A. Yes it would take away to some extent, but that would not be allowed to go on, of course.

Mr. Van Arman.—Would it make any very great difference? A. I don't know how much it would make, if it were allowed to stay so. I don't think an engineer would allow it to continue.

Mr. Arnold.—The accumulation on the north shore would depend on the depth of the water when it was put in? A. The rapidity of the accumulation above water would, I suppose, depend on the space between piers it would have to fill.

Q. But I speak of the north side of the pier. You have no knowledge of the depth of the water when the piers were begun? A. No, sir.

Mr. A.—If you found from the soundings of Capt. Allen that the water was deep on the north side, it would take longer? A. Of course, the deeper the water the longer it would take to fill it up.

Mr. Van Arman.—Isn't that the reason why the further you go out the slower it fills? A. That is one reason; and because there is a longer line to be filled.

GALUSHA ODELL, called by the defendants, being duly sworn, was examined in chief by Mr. Lincoln, and testified as follows:

Q. Were you acquainted with the north pier of the Chicago harbor about the time it was built? A. Yes, sir.

Q. Did you have anything to do with the building of it? A. Yes, sir, I helped to put it in. I worked upon it as a carpenter.

Q. Do you remember when the first part of it was put in—you remember the circumstances? A. Yes, sir, I remember the beginning of it.

Q. Do you remember the beginning of that part of it that joined to the lake shore? A. Yes, sir, I do. I helped do it.

Q. How long after that was put down did you continue to be familiar with the ground about there? A. Up to '39.

Q. Did you continue to work upon the pier most of that time? A. Yes, sir, most of that time.

Q. Do you remember about any firm land or sand forming in there? A. Yes, sir, I recollect there was sand made out there.

Q. Was it in '34 that that pier was joined to the shore in that way? A. Yes, sir, in '34.

Q. Could you say how far the sand made out, from the junction where the shore and the pier joined originally, during the first year, '34? A. I couldn't tell the distance exactly. I would have to guess at it.

Q. Can you tell how much new land formed there by the fall of '35? A. Well, I should judge it was rising three hundred feet.

Q. You would say three hundred feet from the point where the shore and the pier originally joined was made before the last of October, 1835? A. Yes, sir.

Cross-examined by Mr. Arnold.

Q. Isn't that a guess? A. I should have to guess; I never measured it.

Q. It is a guess made over a quarter of a century after the time? A. But I observed it at the time.

Q. You haven't thought of it since? A. I haven't thought particularly about it until I came here.

Q. You never thought of measuring it at the time? A. No, I never measured it.

Q. You know where the angle in the south pier and the angle in the north pier are? A. I knew them. I don't know as I do now.

Q. Where was that angle in the north pier with reference to the shore? A. I think it was not far from two hundred feet west from the shore.

Q. What point did that angle indicate? A. Well, it was near the east bank of the river, I should think.

Q. Was any pier work built from that angle west in the fall of '34? A. I think there was; how much I couldn't tell. We put some piers in there, how much I couldn't say, probably two, or three, or four. We worked there at odd spells, when we couldn't work in the lake.

Q. Were any cribs there in '35, running on west? A. Yes, I couldn't tell how much.

Q. You were carpenter? A. Yes, sir, I worked on the pier.

Q. You say a portion of the pier was built in '34, and a portion in '35. Can you give any definite idea of the extent of the work in either of those two years? A. They put the pier out into the lake and back.

Q. But west of the angle? A. Well, they built back, how much I couldn't say. In '34 they put some cribs back there. In

'35 they built it up to its full height. It was finished back to the angle in '35.

Q. You built crib work west to the angle in '34? A. Yes, bottom cribs.

Q. Did you carry it still further west in '35? A. I could not say. I think we carried it to the angle.

Q. You started at the angle, didn't you? A. No, sir, we started at the lake.

Q. You came up to where you say the river was in '34? A. Yes, sir, on the bar.

Q. Didn't you come over to the bank of the river in '34? A. I think so, I am not positive.

Q. But you do say you put in two, three or four west of the angle? A. We put some west of the angle, and west of the lake shore.

Q. Two, or three, or four? A. I couldn't say.

Q. You worked on it? A. Yes, I did some.

Q. Why can't you remember the distances on the crib you built as well as the amount of accretion? A. I don't know. I recollect seeing the accretion.

Q. Don't you remember seeing the very pier you worked on? A. I couldn't tell the particular point. I know the accretion was there and the cribs were there.

Q. You can't tell the amount of either in '34 or '35? A. No, sir, I have not stated it. There may be more difference in the cribs, because there is a good many there. I saw the accretion or sand.

Q. Didn't you see the cribs? A. Yes, I remember putting it in.

Q. Can't you remember the thing you worked on as well as the thing you looked at casually? A. Well, I don't know whether I do or not, only the accretion after a particular point that I recollect, when the pier was built up, made from that point.

Q. Didn't you build your pier from that point west? A. Yes.

Q. One went east and one went west; why can't you remember one as well as the other? A. I can't pick out the work.

Q. Can't you remember one as well as the other? A. Pretty near.

Q. Which best? A. I don't know as I remember one better than the other.

Q. How far west did the cribs go in '34? A. I think they went to the angle. I don't know exactly.

Q. You put in three or four, you can't tell how many? A. Not positively.

Q. How many in '35? A. I can't tell. I think it was put back to the angle in '35. I think something like two hundred feet.

Q. Did the water break up there that year, '35? A. Not as I

know of. I think the water broke in in '34, around the west end of the pier on the north side. It was sometime in the fall.

Q. Do you remember it? A. I think I do by a storm that came. It broke over the sand-bar towards the river. I don't know whether it ran into the river. It ran over the bar.

Q. Give us some idea of what you remember about it? A. The north wind cut away the sand where the north pier joined the lake shore. I don't know how much; ten or fifteen feet wide, perhaps, and three or four feet deep. I never measured it. That was my judgment. The water passed through when it blowed.

Q. Did you see any boats pass through? A. No, sir.

Q. How did you stop it up? A. I think there were timbers put across from the pier to the sand.

Q. Did it break through at any other time in '34, '5, or '6? A. I don't remember.

Q. This was in the fall of '34? A. Yes, to the best of my recollection.

Q. You think the lake shore was two hundred feet east of the angle? A. Yes.

Q. May you not be mistaken? A. I think I couldn't be mistaken.

Q. Wouldn't you sooner be mistaken about the accretion than you would about that? A. I think I should be more likely to be mistaken in the distance of the lake shore than that there was no accretion there.

Q. But the extent of the accretion? A. Well, I might be mistaken about the extent of the accretion.

Q. You have said you have no knowledge of it any more than how far west you built the pier? A. I only answer my opinion. I never measured it.

Q. Did you see them put in the first crib? A. Yes, sir, I help put it in.

Q. One end on land and one end on water? A. Yes.

Q. Was the pile driven in it by the pile-driver? A. Yes, after it was sunk by the floating pile-driver, on the north side.

Q. Do you know where Shapley's pile was? A. I have heard something about it.

Q. How far from that do you think the old lake shore was? A. Somewhere about two hundred feet or a little less.

Q. About one hundred and eighty feet, you think. A. Yes.

Direct Examination resumed by Mr. Lincoln.

Q. You didn't guess at the amount of that accretion? A. No, sir. I did see it a great many times.

Q. And while you don't know exactly how much there was of it, you think there was all you have stated? A. Yes, sir, that is my opinion about it.

Q. In looking at the end of a house you don't know exactly how long it is? A. No, sir.

Q. You know it is not a thousand feet? A. Yes, sir.

Q. You don't know how long the end of that house is there? A. No, sir.

Q. Don't you know that it is more than ten feet? A. Yes.

Mr. Arnold—Didn't you see that pier that you built west, in '34, and work on it? A. Yes.

Mr. A.—Didn't you in '35? A. Yes.

Mr. A.—You won't venture to guess in regard to the length of either.

GRANT GOODRICH, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago, Judge? A. Early in May, '34.

Q. You have been here ever since? A. Yes.

Q. Where did you live at that early day? A. I boarded then at the Tremont House and the City Hotel that was kept up above here. In '35 and '6 I lived in what was called the Wolcott House or Kinzie House on the north side.

Q. Was that in what was called Kinzie's Addition to Chicago? A. No, sir. It was in the old town close to the line of Wolcott street.

Q. Did you know Capt. Allen? A. Yes, sir, I became acquainted with him shortly after I came here, and knew him until he left.

Q. Did you observe the construction of the north pier? A. I knew it was constructing in, perhaps, the latter part of spring or early part of summer, in 1834. The first vessel came through into the river; the brig Illinois came through into the river, on the 4th of July, 1834.

Q. Were you often on the pier during its construction? A. I can't say often, but several times. I, like everybody else, hadn't a great deal to do here in those days, and the public works were a matter of more interest in that year than almost anything else, and we used to be down there.

Q. Did you observe the making of land against the north pier on the north side? A. Yes, sir.

Q. When did you observe that? A. Well, immediately after the piers were put across the bar, and out into the lake, it was a subject of conversation about the sand making there, and what the effect would be.

Q. Did you observe that during the succeeding year, '35? A. Yes, from that time up, or down, perhaps more in '34, '5 and '6 than subsequently.

Q. Describe the lay of the land, and the manner of accretion? A. The pier ran almost at right angles with the beach. The beach ran down the lake, and on the spit that continued out beyond where the river then ran. When the pier crossed this bar or spit, it ran nearly at right angles with the beach, as near as I

recollect. Immediately that the piers were put out into the lake, it commenced filling up, and filled up, following the pier out; still filling in at this corner there. It commenced filling in there rather in a circular form, and extending out narrower on the pier as you went out, but wider right in the bight or angle. My recollection is that it commenced immediately after the pier was put in. It couldn't be otherwise it seems to me.

Mr. Arnold.—Your recollection, Judge? A. I give that from observation there at the time.

Q. Did you observe it at the time? A. Yes.

Q. Were you there in '35? A. I was.

Q. How much had that increased in a year from the fall of '34, on the pier on the north side? A. I couldn't say as to the number of feet, but a considerable distance. I couldn't say with accuracy, but my impression would be three hundred feet by the spring of '35, perhaps more, from the point where the pier dipped from the beach into the water.

Q. Did it continue to increase during the summer of '35? A. Yes, sir.

Q. In the fall did it? A. It did. There was a very severe storm when the water came over. Where it made there were depressions in the beach, and they were filled up. It stopped these up at this time when the storm broke in there. When this storm came, it broke over these depressions in the beach, and where the angle was made, and in fact all over everything.

Q. Over the whole country there? A. Well, it went over all the piers. In '36–7, or '37–8, I will not be certain which winter it was, the great storm occurred, which came up into the city, almost to the School Section.

Q. After the storm, was this new made land above water? A. Yes, sir.

Q. It was only covered as the rest of that land was in the storm? A. Yes, sir. At first it had washed off this embankment where it was higher at the end of the depression, but it left it as the waves went off. Every wave brought a little deposit and filled it up, and the wind blew it in also.

Q. [Presenting Denton's map.] Look at that map, Judge? A. Right in that light there, it filled up in this way. It filled in there and came out narrower along the pier here, a very narrow beach, and then circled off here. [Illustrating by the map.]

Q. Suppose that to be the old shore, and the pier to have been begun about there, and these lots to be sixty feet wide, describe how far out the accretion was in the fall of '35? A. Well, I can't say as to the slope of it in '35, positively, as being any different from what it was after it had filled up in there, and commenced making out. It always made in about the same form afterwards. They commenced here and the shore must have been here, [pointing.] Where the pier dipped over into the water, the sand washed

right up in the bight there, and kept filling that up. I should think it was a little more circled than it is here, and running out further along the line of the pier here; then it became broader up in the corner there, so that this bight was filled in. That was certainly filled in.

Cross-examined by Mr. Arnold.

Q. You say that in the spring of '34 it had filled up this much? A. No, sir; I say by the spring of '35 it had filled up three hundred feet. I should think as much as that certainly.

Q. How much more by the fall of '35? A. Well, it kept making gradually all the time. I should hardly think it made as rapidly that year as it did in '34, because the first—

Q. Never mind about speculation. A. That is my remembrance.

Q. How much was the accretion in '35? A. I can't say as to feet; it was considerably more than in the fall of '34. I think I could be safe in saying it was three hundred feet in the spring of 1835—perhaps four hundred; I should think it was more rather than less.

Q. Three hundred or four hundred feet more? A. No, sir.

Q. You say three hundred feet in the spring of '35? A. Yes.

Q. How much do you say in the fall of '35—another season's effect? A. I don't think it made quite as fast. I should think one hundred feet more, at least.

Q. That would be four hundred feet? A. Yes, sir, it might be more.

Q. Do you know at what time they commenced building the north pier? A. I think they commenced in the spring, building on the land there, but they didn't get out into the lake until the first of summer.

Q. Can you determine, Mr. Goodrich, how much of that is memory, or how much opinion? A. Well, as to distance, it is as much supposition as actual memory; but that there was a large amount of accretion, and that it was extended out a considerable distance, that is memory. When I come to distance beyond one hundred and fifty or two hundred feet, it is more supposition than actual memory. I have a general memory of that accretion filling up that place in there, and of its constantly making out, and of there being a large amount there. It was the subject of conversation with everybody, and what was to be done. It made out so fast we were afraid it would get around the pier and fill it all up there.

Q. Give me your best recollection and judgment of how much it was by August, '34? A. Well, it was over one hundred feet.

Q. That is your memory? A. Yes, by the first of August, '34. I should think as much as that—very near that.

Q. In point of fact the pier was not begun? A. I speak of the summer. I mean after the pier was put out. After the pier was

there, I mean it followed it out. It was my recollection that it was in ten days.

Q. That was not begun until August; now don't that show you how little memory is reliable at that distance? A. No, sir, because, as to time, neither you nor I, nor any one else, can remember whether a thing was in August, or July, or June. I profess to remember the fact. I can't be mistaken as to the fact that there was a large amount of accretion. It was a very short time. The accretion kept following it out all the time. It was a daily progress. It was just as certain as the action of the waves.

Q. You are theorizing now? A. No, sir, I am stating a fact.

Q. Was that about the accretion in August memory? A. Well, sir, as to August, it was a misapprehension as to time. I couldn't tell exactly whether it was September, or August, or July, or June. The pier was into the water in July.

Q. You are sure of that? A. I think so. It was to the water, at all events, because the pier was commenced very near it.

Q. When? A. In the early part of summer. I think in 1834.

Q. If you should find yourself mistaken about that, would you not doubt your memory? A. If I were mistaken as to that, it would not alter my memory as to the accretion.

Q. Is it not a little singular that men often have a pride in their memory? A. No, sir, I have no pride in it.

Q. Having been judge, I thought you would have observed that fact. It is illustrated in the story of the height of the house. Excuse me, but I thought you might sometimes have seen such witnesses. You have no pride in your memory? A. I don't think I have any, except to state the fact that there was an accretion.

Q. Beyond that you have no very definite idea of this first year? A. I can't say it was two hundred or three hundred feet; but my impression is that that summer or fall of '34, it made out nearly to the end of where the pier was.

Q. How near the end do you think? A. My impression is that the accretion continued; I could not say to within what distance of the end of the pier; but it followed the pier out, as it was made, nearly to the end of the pier.

Q. How near? A. I can't say.

Q. Was it within one hundred feet? A. I couldn't say.

Q. Two hundred? A. Yes, I think so. I don't think the pier was two hundred.

Q. Not two hundred feet further in the lake than the accretion? A. Well, I can't say as to that. My best recollection is that it was within two hundred feet.

Judge Morris—Are you certain that it was within three hundred feet? A. I wouldn't say that.

Judge Morris—Are you certain it was within four hundred feet? A. It is my best recollection that it was less. My impression would be that it was nearer two hundred than four hundred

Q. You stated that your best recollection was two hundred; do you wish to change that? A. I don't desire to put that with any kind of certainty, because my recollection as to how far the pier was beyond that is very vague.

Q. Could you put the extent of the accretion from the west end with any more certainty? A. Yes, I can state the fact that a large accretion made there of several hundred feet. That I can state with certainty, and that it seemed to follow the pier out; and as the pier was put out the more rapid the accretion was.

Q. You spoke of the water's going over in the spring of '35? A. No, sir, my recollection is it was in the fall of '36 or '37, about December. There was a storm before, but whether it went over that or not, I don't know.

Q. Do you remember of any in the spring of '35? A. I don't remember any when it went over.

Q. You spoke of a storm in which these rises of sand were washed off? A. That is the one I have reference to—in the winter, my impression is, of 1836–7. Still there was in the fall of '35 a very severe storm. That was, I think, the last of September, or first of October.

Q. Describe its effects upon the shore and pier? A. My impression is now that the water went over there then. It went over the pier. The effect upon these banks of sand that had washed in there was like this [taking the map in hand and illustrating by it,] here the waves went over and they would gouge it out there and slip away up here. This lay in that way along here. When the sand commenced to make out it made right across here. It left these places and cut through here, and went out back that way.

Q. Do you know whether it ever ran around the west end of the pier? A. I think it did.

Q. When was that? A. The time I remember was in '36, I think I heard something about it going over before, but I was not there to see that.

Direct examination resumed by Mr. Fuller.

Q. If you should be advised of the fact that the first launching of timber on the north pier, down in the water, was August first 1834, and that by September 30th it was put out six hundred and thirty feet into the lake, would you from the knowledge of these dates, lessen your estimate of the amount of accretions? A. No, sir, the accretion is a fact.

Second cross examination by Judge Morris.

Q. Don't you remember that the lake rose from '33 or '34, until '38? A. I believe it did rise some.

Q. That was the time it run up the streets of Chicago, was it not? A. My impression is—[after a pause,] I am thinking, and thought I didn't live in that log-house but one winter, but I lived there two winters, it was the second winter. I remember of its

barring up the river and seeing barrels and every thing else going up like a race-horse.

Q. How high was the rise of the river at that time? A. It must have been at least four feet, some said seven feet, four feet I think. It came up to Dearborn street. The bridge you know was across there then.

Q. What was the general rise of the lake? A. I don't think that it was more than eighteen inches.

Q. Was it not three feet? A. I don't think it was. I don't think it was any higher than this last year.

Q. Didn't the old sand-bar disappear from the same blow? A. Some considerable of it did from the upper portion, but it kept carrying it down and widening it out into the lake. It was a great deal wider than it was originally right after that blow. It kept digging into it on the north and washing it down, and then it would widen out.

Q. How much beach was shown north of the north pier in here where the water washed up, at the time you spoke of, when the water washed up against it? A. Along after you came, my remembrance would be one hundred or one hundred and fifty feet. It was pretty near here and come in in a circular form or widened out. [Illustrating by the map.]

Q. How high up did the water wash? A. It didn't wash up to the top of the pier in ordinary storms.

Q. How far did it run up on the shore? Wasn't there always a place there kept white and damp? A. Yes, it would run over into these gullies. It would be water in there for sometime until it evaporated. My impression is, that along up the pier the pier was higher than it was above. The beach ran off, and was more abrupt near the pier and in this circle than up the lake further. Here the lake would run up quite a distance. Right close up to the pier it filled up and made it higher, and there was a resistance of the water. The under-tow didn't take out so much as above.

Q. You never measured the accretion? A. No, sir.

Q. You never estimated it after a storm? No, sir, only I could see there was a formation.

Q. But If there was no storm, you could not see that there was any formation? A. I could not say, I never saw—

Q. Did you ever notice the accretion? A. Yes, I have noticed hundreds of instances; I have a fancy for water. You may have a northeast or a southeast blow, and you will always find the beach will make—I don't mean a hard blow, but little waves. Then you will always find the beach making faster than in a storm. It is after a storm when the wind is going down that the beach makes.

Q. That is so, is it? A. Yes, that is so, it makes faster when the storm commences subsiding. Then it makes land until it goes down to a mere ripple, and every ripple will throw up something;

then the storm will come and the reflex [?] waves will take that light stuff away.

Q. Isn't the first effect to cut the sand out? A. The first effect of the storm is to take the light sand right out by the under-tow.

Q. To extend the shore, and then fill up again? A. Yes, to wear the beach. The beach is precipitous, and you may find ridges not more than six inches above the water, when the waves are not high. Now when the storm comes it takes a great deal of it and throws it up, and makes it higher up—levels it up. It makes it a gradual descent, taking off this sand, and this light stuff away; and then, when the storm subsides, that commences making again. It makes more rapidly in such weather than during a storm. Anybody that has noticed the operation of the lake here will see that. I have always lived on the lake.

Q. You think the lake was eighteen inches higher then? A. Yes, it commenced to rise pretty late in 1834, and continued to rise until 1838, when it reached its maximum.

Mr. Fuller.—You have been pretty well acquainted with the water for a good while? A. Yes, sir, I have always lived on the lake shore.

Court took a recess of twenty minutes.

BENJAMIN JONES, called by the defendants, being duly sworn, was examined in chief by Mr. Van Arman, and testified as follows:

Q. Where do you live? A. I spent the winter in Manitowoc, Wisconsin.

Q. Did you ever live in this city? A. Yes, sir.

Q. When did you come here? A. I came here a week ago last month.

Q. But when did you come here to live? A. In the spring of '33.

Q. Where did you live? A. I lived on South Water street the first season, between Clark and Dearborn.

Q. Were you here in the summer of '33 and in '34? A. Yes.

Q. Do you know lots 34 and 35 in Kinzie's Addition? A. Yes, sir.

Q. How early did you become acquainted with those lots? A. In the latter part of the summer of 1833.

Q. Did you ever pace the line between these lots? A. No, sir.

Q. Did you ever attempt to? A. No, sir.

Q. Have you any means of knowing where it was? A. I traced the line between 34 and 35, which of course would be sixty feet east of the line between 33 and 34. I think that was either in the latter part of summer or early part of fall, 1833—probably in September.

Q. Who was with you? A. Mr. McGregor was with me at one time.

Q. When did you commence? A. We commenced at the stake which was pointed out to me to be the northwest corner of lot 35. That stake stood on the south side of Water street.

Q. Who pointed it out to you as the northwest corner? A. Mr. McGregor.

Q. Do you know how the stake was ascertained by Mr. McGregor? A. No, sir.

Q. You took it from his statement? A. Yes. When Mr. McGregor went down, he kind of counted the stakes along, but I paid no attention to them.

Q. Can you tell how many lots lay between that and the water? A. There were some seventy-five or eighty or ninety feet between that stake and the water—the shore directly east, or rather bearing north of east from Water street.

Q. What did you do to locate that line? A. I made a little calculation of what would be a right angle.

Q. How? A. Merely from imagination—from guess.

Q. From the eye? A. Yes, at the time. That is, I sighted through to see where that line would come, to observe any objects in a southerly direction, and then walked through to strike the lake shore.

Q. You sighted as near south as you could? A. As nearly at right angles to Water street as we could.

Q. You then pursued that course south? A. Yes, southerly and southeasterly. I pursued it about four hundred or five hundred feet.

Q. How did you ascertain the distance? A. By stepping and estimating my steps.

Q. Had you anything to measure with? A. Nothing, only barely to step and calculate as I have been in the habit of measuring land in farming. I calculated I stepped off about one hundred and fifty steps. When I got there we had a stake that was laid out, and struck for the south pier, or where we supposed the harbor would be built. When I had got about that one hundred and fifty steps, I was satisfied that I had got far enough to strike that, and then bore off to that stake. It was probably some fifty or sixty steps beyond where I stopped counting to the water's edge.

Q. You didn't reach the water by about one hundred and fifty feet? A. I think not.

Q. This was the latter part of summer or fall of '33? A. Yes.

Q. Had anything been done to the harbor at that time? A. Nothing on the north side. There had been something probably on the south pier.

Q. Did you ever afterwards make an effort to locate that line? A. About a year afterwards, in the early part of the fall of 1834, I went there again with the same Mr. McGregor, and with the assistance of men at work on the harbor, we made an effort to get an exact line there by taking boards and laying them down and

making a right angle towards the north pier. We took a board with a straight edge and square form and laid off a right angle, and sighted through to the pier.

Q. You had a common carpenter's square? A. Yes, sir, one the carpenter had.

Q. With that you formed a right angle? A. Yes.

Q. How did you locate the sides? A. We governed one by the row of stakes, and the other one stood at right angles to Water street, and nearly so to the pier.

Q. What time in 1834 was that? A. I think that was in the early part of the fall of '34.

Q. What then? A. After we got these points fixed at right angles, I went down and stood on the pier, and they sighted through. I had an axe which I held on the side of the pier; I moved the axe along until they said it was in the right place, and and then I cut a notch in the pier.

Q. At that time was there any water between the point of starting on the northwest corner of lot 35 and the pier? A. No, sir.

Q. How far did you cut this notch from the water line? A. About twenty feet. I was about twenty feet from the water line of the lake east of me—east of that notch cut in the pier.

Q. Have you any means of fixing the exact distance? A. I measured it at the time with a foot rule. I measured from the water, and made a memorandum of it at the time, and the memorandum said twenty-three feet.

Q. Have you that memorandum now? A. No, sir. I have not seen it since I was on the stand at the other trial. I did not have it in my hands. Mr. McGregor had it in his pocket.

Q. What time was that, did you say? A. This was in the fall of '34—probably September.

Q. How far had the pier progressed into the lake at that time? A. I haven't a distinct recollection. I didn't measure it, and I couldn't give the distance. I don't know as I can give any judgment as to how many feet. It was some little distance, but I couldn't say whether it was one hundred, or two hundred, or three hundred feet at that time. It was some considerable distance into the lake, but whether one hundred, or two hundred, or three hundred feet, I couldn't say.

Q. Had any accretion then formed between the pier and the shore in that angle? A. I should think there had, a considerable. I couldn't state anything about the amount, for it had been washed out very considerable before that, and had partially filled up by being excavated out from the pier. It had been washed out considerably there, and then filled up. They excavated in the sand to make room for a place to put in the pier, something back of this, and threw out considerable sand there; and I couldn't exactly tell about the accretion at that time. It washed it away

in consequence of the current from the river and the northeast storms: it had cut off that bank or point on the north side, so that the sea set in back of this some distance; and back of this they had excavated some distance to commence back of me, before I noticed it, so that the commencement of the pier was a little ways west of here.

Q. At this time there was no water between that and the end of the pier? A. No, sir.

Q. From that forward, how long were you acquainted with the progress of the pier? A. Until the spring of 1835. I left the city about the fore part of June, and didn't return until about the same time in '36.

Q. How often were you there about the harbor during '35 and '36? A. I couldn't tell how often, but I was frequently there, and occasionally on business, and to look at this accretion.

Q. You went there occasionally to look at the accretion? A. Yes.

Q. What called your attention to the accretion? A. I had purchased the lot—lot 35.

Mr. Wills—From whom? A. Well, I made the trade with Mr. McGregor.

Q. You had an interest in that lot? A. Yes, sir.

Q. This called your attention to it? A. Yes.

Q. How often do you say you were there to look at the accretion? A. I couldn't tell how often. Sometimes it would be once a week, sometimes twice a week, and sometimes not so often; but I took notice of that lot and accretion every time I felt like walking down that way.

Q. From the fall of '34 until June, '35, what changes did you notice? A. From the time I cut this notch in the pier in the fall, until the sping of '35, it had filled out a little over one hundred and eighty feet, according to my best judgment.

Q. From what point do you commence that? A. From the water's edge. I generally, when I went on the pier, would step off the distance, and I generally started from that notch; and I stepped off to satisfy myself it was over one hundred and fifty feet beyond that, which would make it with this twenty-three feet, about one hundred and seventy feet.

Q. What means had you of ascertaining? A. No other means but stepping or pacing it off.

Q. How frequently did you do that? A. I couldn't tell how frequently. I did it several times in the course of the spring and the early part of summer. It was not so much in the fall of '34. I often stepped it off to see how much it made, with a view to see how much it made on in the winter; but in the spring before I left here it had made one hundred and fifty feet and over.

Q. With what degree of confidence can you state? A. With as much confidence as I can state any fact I ever knew.

Q. What was the character of this made land? A. Sand.

Q. Where was the land highest? A. Generally the farther from the water's edge the higher it was, until it got up to the top of the pier. In the place the land had made out some ten or fifteen feet from the pier; out a little farther there, right up by the pier, near the east end. When the water struck the pier, it would kind of run up the pier and form an eddy there. Out further it went back, so that there was a little round corner next the pier. [Illustrating.]

Q. Of what extent was that? A. Sometimes I should think the point was twenty or thirty feet from the pier. It would be about twenty feet further out there, than next to the pier; but that would be two feet higher next here than it was out there. [Illustrating.]

Q. Was that permanent or changeable? A. It was somewhat changeable, under the circumstances. When the heaviest blow would be in operation, the water would be the highest, and that would take the sand back considerably until the lake went down. When it fell the water would be lower, and it would show a very great increase.

Q. How much did it increase the next year when you came back? A. I went by the same rule, and I made up my mind it had made on something over three hundred feet during my absence. That would be the spring of 1836.

Q. Do you know anything about a fence on that line? A. Yes.

Q. When? A. I think it was '43.

Q. How do you know it was on that same line? A. By that notch.

Q. Did you have occasion to notice whether it came out at that notch? A. Yes, sir, after the fence was building, and after the commencement of this suit.

Q. You went expressly to find it out? A. Yes.

Q. Was there any other means of fixing that? A. Only from the corner stake, what you call the northwest corner of the lot.

Q. What kind of a stake? A. A split stake, of pretty large size for an ordinary stake.

Q. Was it cedar, or not? A. I am inclined to think it was. That was at the northwest corner of lot 35. There's where we set this square, on this stake, at right angles with Water street, and this pier at the notch.

Q. Was any post set at the notch? A. The time I set this stake was in 1833. In the summer or fall of '43, I assisted in building a fence, and I had a surveyor and surveyed the line, and found a notch in the top log of the pier. A fence was built from that stake, which I had recognized as the northwest corner of 35, to this notch. I was told to build this fence to this stake, and I went on and built the fence, and put a stick, a straight piece up, and spiked it against the pier to correspond with this notch in the top. I paid no attention to it, and when I found it,

I didn't think of the notch being there; it had slipped my mind, being ten years before.

Q. You spiked on that post without reference to the notch? A. Yes.

Q. What called your attention to the fact that they corresponded? A. After this suit was commenced, and we began to talk about the circumstance, I looked the thing over to refresh my memory of the transactions, and in conversations about the making of this land, I recollected the circumstances, and immediately went down and examined the pier to find out about this post. The cedar post was spiked on, so as nearly to cover the notch up.

Q. That was in '43 that you were building the fence? A. I think it was.

Q. You say you built that fence by direction—whose direction? A. Mr. Jones.

Q. Were you present at any survey at that time? A. No, sir.

Q. Do you know anything about the possession of that lot east of the fence by Mr. Jones? A. I never saw nor heard of anybody's claiming or having possession except him.

Q. Do you know of the possession by Mr. Jones? A. I know he had possession from the fall of '33.

Q. How soon did he make any actual use of it? A. I don't recollect—I was away some part of the time. The first I knew of his actual possession of it was building this fence, or about that time. There was a building; I don't know whether that was put on before or after the building of the fence—probably it was before. It was the same season '43.

Q. What building? A. It was a building called the old harbor office which was moved on or about that time.

Mr. Arnold.—Do you say '43? A. In '42 or '43 or '44. I am not positive whether it was before the fence was built, or after that, but he took possession by buying that building and putting his fence there.

Q. Do you know of his removing or selling any sand from there? A. I really don't recollect whether I knew of his selling any or not. I knew of his taking a great deal of pains to prevent anybody else from taking sand from there. I really don't know whether he may have sold any or not. If he did sell any, I presume I should have known it. I know he was remarkably tenacious about anybody taking even a single load.

Q. When was that building put on? A. I have no means of recollecting the date exactly.

Q. You know of no other man having possession except Mr. Jones? A. No, sir, not from the time I first looked at it.

Q. Did you ever know a man by the name of Sollitt? A. Yes, sir. He took possession under us—my brother.

Q. At what time? A. I really can't recollect that time, but

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it was after '43. He lived in it. He built the house and lived there.

Q. Where was that house? A. It was down some five hundred or six hundred feet east of the line of 35, I think. It was near the lake shore. It was right near the river.

Q. Do you know of a fence being built along the pier? A. There was a fence built a little back from the pier, and parallel with the pier, about '42 or '43. There was another fence built, or calculated to be built, on that, near the line of Sand street. That was in '43 or '44. That extended down to the lake shore. Mr. Jones built it.

Cross-examined by Mr. Arnold.

Q. You are a brother of the defendant, William Jones? A. Yes, sir.

Q. Tell the year that that building was put on the lot? A. I couldn't tell the exact year. Which do you mean?

Q. The one you have just been talking about that Sollitt lived in? A. I should think that one, if I am not mistaken, and this was a good while ago, and the question was never asked me before—

Q. Never asked you before? A. No, sir, and I might be mistaken about the place. Mr. Sollitt lived in two different places there. The house I have been talking about on the end of the pier, was put there probably in '44.

Q. Will you say positively it was put there before '45? A. No, sir, not positively; it might be '44 or '45.

Q. Will you be positive it was before '46? A. I think so.

Q. What you are positive about is one thing, and what you think is another. Will you be positive it was put there before '46? A. No, sir.

Q. Will you be positive it was before '47? A. No, sir, of course I won't.

Q. Would you be positive it was put there before '48? A. I won't be positive about that.

Q. '49? A. I won't be positive as to anything about it.

Q. Will you be positive it was put there before '50? A. I told you I couldn't be positive to anything about it. My recollection was, it was put there in '44 or '45. I may be mistaken about his having a house down there. It may be that he lived at this time in what used to be called the office of the Garrison, and it's possible that I allude to another house kept by another person down there. My impression was, that Mr. Sollitt built the house outside, but I may be mistaken, since you have come to question me. It may be it was another man built out there, and Mr. Sollitt was in the Government office.

Q. You are not positive that Sollitt lived there at all? A. Yes, sir, in the summer of '45, probably '44.

Q. Are you positive of '45? A. Yes, sir, on these premises. I

am not positive which house. It is a thing I never thought anything about.

Q. Where did he live in '45? A. He lived down on the sand block, in which house I am not positive. My impression is—

Q. I don't want impressions? A. I am not positive about it, only that he lived down there on the premises.

Q. Are you positive when that fence was put up that came down to the pier? A. I helped to build it.

Q. You can't be mistaken about '43? A. No, sir, I am not mistaken about that.

Q. Did you own the land? A. I claimed to own it.

Q. Was the title in you? A. I guess—I rather think it was.

Q. How long did you hold it? A. About three years.

Q. Do you own it, or hold it for your brother? A. I owned it.

Q. Had he ever owned it then? A. Yes, sir.

Q. How long before that had he owned it? A. He took a deed of it in '34.

Q. When was it conveyed to you? A. I don't recollect. I didn't keep any memorandum at the time; but, perhaps, about '41 or '42. The records will show.

Q. Your brother took the benefit of the bankrupt law, subsequently? A. Yes.

Q. Before he took the benefit he conveyed that to you? A. No, sir, he didn't.

Q. Was it after he took the benefit? A. No, sir, he never conveyed it to me. It was sold at Sheriff's sale, as I understand it, and bought off by a man named Dennison, and Dennison deeded it to me.

Q. Did you pay anything to Dennison?

Objected to.

The Court, after discussion, stated that the question was incompetent, unless it was asked with a view to show that the witness was an interested party, and thus disqualify him.

Mr. Arnold stated that while he did not expect to elicit such facts as would legally disqualify the witness, he did expect to show a degree of interest, expectation, or equitable claim, such as would be sufficient to affect his credibility with the jury. He proposed to prove by the witness the facts stated in his former cross-examination as recorded in the Bill of Exceptions, in reference to this transfer of the property of his bro her and the circumstances connected therewith. So far as that testimony showed interest, he proposed to prove interest, but no further; to which proposition defendants objected.

The Court [after perusing the former testimony of Mr. Jones, as given in Bill of Exceptions] sustained the objection and excluded the testimony;—to which ruling plaintiff's counsel excepted.

[The following are the portions of B. Jones' former testimony referred to by Mr. Arnold, and presented to the Court:

"*Cross-Examined.*—Have not held title since commencment of this suit; think title was in my hands at commencement of same. In winter I went to see McGregor. I went to Iowa to get McGregor's evidence winter after suit was commenced. Had made deed to my brother at that time. I think took two maps with me, original map, copy recorded map, and Hathaway's map, for McGregor to see. His deposition was taken then. Was present when part of map was made. I was present when his map was commenced. I did not assist him in making map. When I conveyed lot to B. Jones no money was paid me. It was done in settlement of account; we made a division of property. I got my title from Dennison, in Connecticut. I paid Dennison through my agent, Collins, Arnold, and him. Money was provided by me. I got title prior to 1843, and held it to 1849. We had other property in common at that time. Reason I held this property was because we failed in business, and I was not so bad in. I was endorser for him, and we agreed to go in partnership, and speculate, and we purchased this property of creditors. He had taken benefit of act bankrupt, and so I held title. I had interest in note. My interest was the whole in that property. In 1843, we thought to look up fraction beyond. I agreed to give my brother half, if he would see to mortgage that R. A. Kinzie had given, and stand all the lawing about that fraction. We dissolved partnership afterwards. Nothing was said about the lot, let it lay along. In the first place we had an arrangement. Partnership was in 1843, and it was settled up five or six years afterwards. Deed from Dennison has been in my possession. I did not receive it in first instance. B. Jones generally kept papers at his house; possession with other papers of the partnership; but not in my exclusive possession. I objected to buying unless I had quit-claim. Paid for this property out of rents. We divided property six years after 1843; settled up; book did not include all real estate operations; we left nothing unsettled; one lot only we left undivided; there were writings and bonds in the court at other trial left with attorneys of this court; no deed; was given at time; and that was my understanding, that on account of bankruptcy no deed was given. Not interested in lot thirty-five or fraction, nor any part of it. It was expressly understood defendant was to have property. After securing that fraction, we had no idea that there was to be any litigation of this kind. Defendant called on me to take deed. Nothing was said about my being witness at time of taking deed by defendant. * * * I was in Milwaukee and saw Sweet. Took Sweet on my return. Disremember whether deed was made at that time. * * * *Re direct.*— * * * Deed shown me is dated 4th July, 1840, and is from Dennison to B. Jones. Deed is offered in evidence to court by counsel without objection.

Deed shown to me is one I executed to defendant spoken of, dated 19th November, 1850, offered in evidence in court, including lot 35."]

Q. Did your brother pay you anything when you deeded the property to him? [The question being put with the same object as above.]

Objected to. Objection sustained. Plaintiff's counsel excepted.

Cross-Examination resumed.

Q. Were you the owner of this property at the time this suit was brought in 1849? A. No, sir.

Q. Did you hold it down to '49? A. No, sir, not as late as '49? I disremember the date of the deed. That will show.

Witness [to the Court]—Won't the Court allow me to explain the manner of the transaction?

COURT—If the counsel are willing, I am willing.

Mr. Van Arman—You are a witness, Mr. Jones, and we have the control of this.

Witness—I asked the protection of the Court, because I didn't think I was well treated by asking a question on one side, and forcing me to answer without allowing me to give the other side.

Mr. Van Arman—We'll settle that out of doors.

Mr. Arnold—Where was the lake shore in 1833, with reference to the angle in the south pier? A. The south pier was not built in '33.

Q. You know where the angle is in the north pier? A. Do you mean the angle at the west end? No.

Q. Do you know where Shapley's pile is? A. I don't know anything about Shapley's pile.

Q. Have you been shown Shapley's pile? A. I don't know whether I have or not.

Q. Were you not down there when they pulled it up? A. No, sir.

Q. Has it not been pointed out to you? A. It appears to me some one did point it out, but I never had heard it called Shapley's pile. Somebody told me that when Shapley went down with the jury he pointed out a pile, and one was pointed out to me as that one.

Q. Was there an angle in that pier at that place or neighborhood? A. No, sir.

Q. Was there twenty-two feet west of it? A. I think not, sir.

Q. Are you positive about it? A. I think I am.

Q. Quite positive? A. I think I am quite positive. I think there is no angle within one hundred and fifty or two hundred feet of it.

Q. Which way is the angle, one hundred and fifty or two hundred feet from there? A. Well, the end of the north pier.

Q. Which way is the one hundred and fifty or two hundred feet from that angle? A. West of the lake shore.

Q. No, you say there was an angle one hundred and fifty feet from a pile called Shapley's pile, which way was the angle? A. I don't know; I didn't pay any attention to get the number of feet.

Q. You just now said there was an angle one hundred and fifty or two hundred feet from such a pile? A. No, sir, not so much west of that pile, but west of the west line of section (?) 35.

Q. I didn't speak of section 35. You said somebody pointed out to you a pile called Shapley's pile, didn't you? A. It was not called Shapley's pile at that time. I have heard you lawyers call a pile Shapley's pile, but I never knew where it was.

Q. Has it not been pointed out to you? A. I don't know what you claim as Shapley's pile.

Q. Didn't you say somebody pointed out to you a pile called Shapley's. A. I didn't say it was called Shapley's. Shapley swore that was the first pile that was driven.

Q. Was there an angle in that neighborhood? A. Not very near it.

Q. How far off? A. I don't know. One hundred and twenty-five or one hundred and fifty feet west of that. At that time, however, there was no angle. In the first place the pier was not more than one hundred and fifty feet.

Q. You say there was no angle? A. Not what you call the angle; there was no pier west of the angle in '34. There was no angle at the west end.

Q. In '34, was any portion west of the lake shore built? A. Yes.

Q. How much? A. Two hundred or three hundred feet.

Q. Was there an angle where this pier joined the shore? A. No, sir.

Q. You are sure of that? A. Yes, sir, none on the lake shore.

Q. Where was the angle? A. It was on the west end of the pier at the time I left the city.

Q. Where was that in reference to the lake shore? A. Some two hundred or three hundred feet west of the lake shore.

Q. What made it? A. The pier that run into the lake across the sand-bar was built, and afterwards they went back and built up a dock, and extended the pier west by building a sort of a dock.

Q. When was that done? A. I couldn't tell you what year; it was after '34.

Q. Was it in '35? A. I don't know; I wasn't in the city in '35.

Q. Was it in '36? A. I couldn't tell you; I went away in the spring of '35.

Q. Had it been built then? A. I don't remember.

Q. You say it was not built in '34? A. No, sir. It might have been late in the fall that there was something done there. I heard considerable about the water breaking over in a heavy gale

in the fall of '34, and of excavating out the sand. They put it back. It has been since rebuilt.

Q. When did you go away? A. In the spring of '35.

Q. Was that pier built west when you went away? A. I couldn't tell you.

Q. Can you not be mistaken in regard to the location of the old lake shore? A. No, sir.

Q. You are positive? A. Yes.

Q. As positive as of anything you have testified to? A. As positive as of anything that has ever happened during my life.

Q. You say that is two hundred or three hundred feet east of the angle? A. Yes.

Q. When did you say you first looked down the line between 34 and 35? A. In '33.

Q. Where would that line strike the pier—how far east of that angle? A. Some two hundred or three hundred feet, pretty nearly on the lake shore.

Q. Just about the edge of the water? A. Yes. You asked me a question before, and I answered; is it both the same question, or did I misunderstand you? I think you asked me how far the west end of the pier was, and you now ask a question. Do you allude to another position, because the distance wouldn't be the same?

Q. No, I speak of the angle. There would be twenty-two feet difference between it and that pile? A. There would be more difference than that. I don't know how much. I couldn't tell you how many feet.

Q. You say the line between 34 and 35 struck just about the edge of the water? A. Yes, it struck the water's edge about where the south pier would strike the lake.

Q. Did you speak about the accretion in '34? A. I do not recollect whether the question was asked me.

Q. Did you speak any thing about it, at the former trial, in '34? A. I don't recollect in what manner the question was asked me, they we asked so indefinitely. I don't recollect whether I was asked or answered that way, but the thing was done, and I supposed that would be the last of it, and I didn't charge my mind with it.

Q. Had the lake shore changed in '34? A. Not materially. It had been washed off in consequence of the action of the water, sometime after the channel broke through.

Q. How much had it been changed? I don't know, very considerably by the washing off. It was changed by the action of the current coming out here, and the waves from the lake cutting off this point across here.

Q. You said it had not changed materially, what did you mean? A. I meant that it hadn't changed any further than the washing off of that point.

Q. Was that material? A. It would vary considerable.

Q. When you said material you meant considerable? A. I meant it hadn't changed the lake shore generally, but at that point. I don't know how much it rounded it off, but it was considerable. I should think it widened the channel of river thirty or forty feet.

Q. You get that from where you suppose the old lake shore was? A. Yes.

Q. You spoke of the waters coming through in the fall of '34; where was that? A. That was west of the west end of pier.

Q. Describe it? A. I was not present at the time, and couldn't give you any description. I know there was a severe gale, and after it was over I went down to the lake and looked at it, and it looked as though the water had broken over and washed considerable sand into the river. They were filling it up then; wheeling in sand from where they were still to work.

Q. How much had it cut through? A. I couldn't tell you, because I didn't measure, nor want to know very particularly about it. It didn't effect any object of mine. That was in the fall of '34, and the place was the west end of the pier. I don't know how far it was built. I was west of where they commenced to put the pier down. I don't know how far.

Q. You couldn't state whether it was two hundred or three hundred feet? A. It might have been one hundred or two hundred feet west.

Q. Did the water run through there from the lake into the river? A. I never saw it do so.

Q. Did it leave a place visible to the eye, where it had run through? A. Yes. From the waters flowing over in a high gale. It was no channel. It had washed in the sand.

Q. Did it leave a channel visible to the eye? A. Yes.

Q. How wide? A. I don't know.

Q. How deep? A. I don't know. I should think a considerable width.

Q. What year was that you said you went to North Water street and formed a right angle with some boards? A. It was in '34, in the early part of the fall; perhaps in September. It was before the fall winds.

Q. Were the stakes visible along North Water street? A. Some of them were, some had disappeared—were covered up.

Q. Did you count any of them? A. No,—or yes, I might have counted some along there. I remember of going down with McGregor in '33, and coming along up. I didn't count them in '34.

Q. You went where you thought the line between 34 and 35 would come? A. Yes, sir.

Q. Was there anything to distinguish 35 from 34 or 33? A. Nothing more than the same stake that I had kept watch of.

Q. Was that different from the other stakes? A. Yes, sir, it was larger.

Q. How much larger? A. Well, it was probably large enough to make two of the other size.

Q. Did you put it there? A. No, sir, it was there the first time I went there.

Q. Did you pull it up? A. No, sir, it was larger than the other stakes.

Q. Was it the same sort of wood? A. I presume it was.

Q. What was the diameter of the other stakes? A. It would be something like an average of an inch or an inch and a half. This was over two or two and a half.

Q. The only way you found and distinguished the lot was by the size of the stake? A. Not only the size of the stake, but the general appearance of the shore. I considered that I knew that stake as well as I knew anything.

Q. That stake was what guided you? A. Yes, sir, at that time.

Q. Did you look at the other stakes to compare them? A. I noticed them as I passed along occasionally.

Q. The principal thing that enabled you to fix on the right lot was the size of the stake? A. The size of the stake, the lake shore, the pier, and the land.

Q. Do you say that the principal thing was the stake? A. Perhaps that was more principal than any thing else, because that stood there immovable.

Q. How many stakes did you compare with that? A. I don't recollect any particular number, only I noticed the stakes as I passed along.

Q. Was there anything to distinguish it except its size? A. No, sir.

Direct examination resumed by Mr. Van Arman.

Q. You say there was no angle at that point where they commenced the pier on the lake shore? A. I didn't discover any.

Q. You do recollect an angle west of there? A. There has been an angle made there since.

Q. Do you locate the shore by that angle west of it? A. No, sir, I never did.

Q. You have no reference to that angle in locating the shore? A. No, sir. The place I call the angle was where I suppose was the west end of the pier, where we used to go down and get on the pier. I suppose that's what's called the angle.

Q. The only angle you know about is two hundred or three hundred feet west of the shore line? A. Yes.

Q. Would any mistake you made in respect to that effect your judgment in respect to the accretion? A. No, sir, I may be mistaken about the angle, undoubtedly. I had no recollection of the

angle at all, and the question of the angle never occurred to my mind until I heard it mentioned in the course of this trial yesterday

At the point where the pier struck the shore, you say they excavated into the shore? A. Yes.

Q. Was there anything peculiar about that crib just at the shore that distinguished it from the others? A. The first crib put in ran considerably back of the original shore.

Q. But the crib which was at the shore, which they put in first, was there anything to distinguish that first one as to the mode in which it stood? A. Yes, sir. The pier near the shore was a little more slanting than the others, and it was filled up.

Q. They commenced again at the west end after extending it out into the lake, and built a pier westward two hundred or three hundred feet? A. Yes, sir.

Q. When they leveled up the pier east into the lake, did they raise up the pier west to the same height? A. I believe they did but I was not present. It was after I left the city.

Q. Had they commenced levelling up the pier that ran into the lake when you went away? A. I hardly think they had.

Q. Do you know how far they had progressed in raising it up? A. No, sir, I didn't pay particular attention to that; my only object was to view the outside lot of 35, and when it got outside of that, I didn't take pains to measure as to the building of the pier.

Q. When you went there and located the line between 34 and 35, had you any difficulty in locating that northwest corner? A. No, sir.

Q. What enabled you to locate that corner? A. In the first place it was pointed out to me, and I examined it, and kept my eye upon it. It has never been disputed.

Q. From the time it was pointed out to you, you observed it whenever you were there? A. Yes.

Q. Did the lake shore give you any assistance in locating that corner? A. Yes, sir, after the lots had been pointed out to me. I knew the distance to the lake shore at that time, and made a little calculation always from that.

Q. Were any stakes between that and the lake? A. I never saw any to notice any.

Second cross-examination by Mr. Arnold.

Q. What corner did you start from? A. The northwest corner of 35.

Q. No stake was east of you? A. No, sir, none between me and the lake to my knowledge.

Q. Which was farthest east, 34 or 35? A. 35. The particular lot was pointed out to me by Mr. McGregor.

Q. If he made a mistake when pointing it out to you, you wouldn't have corrected the mistake? A. Inasmuch as I kept

my eye upon that particular stake ever since, and that fence being put on the line and never been disputed, convinced me that I was always right.

Q. Is that stake there still? A. No, sir.

Q. When did it disappear? A. When the fence was moved. It stayed there until '43, or I think it did.

Q. Of what wood was it? A. Cedar. I think. It remained there covered up with sand to a considerable depth. A cedar post was put in to make that fence, and this was at the bottom of it. I think it was cedar. I found a stake there, and I called it the original stake.

Q. Was it cedar? A. I don't know that I examined it to see, but I supposed it was the same stake.

Q. Was the original a cedar stake? A. I think it was. I may be mistaken about it. I really don't know that I ever examined it particularly, except from its being split, and our using cedar generally for that kind of work at that time. After that stake was pointed out to me, I was there often enough to keep my eye and mind upon it, and I was watching. In making the fence, we went there and found it had been surveyed, and found the original corner, and put the fence there. It has never been disputed.

Q. I didn't ask for that? A. I merely mentioned it to show that I never criticised my mind upon it.

Judge Morris—Was that the Sollitt house down by the lake shore? A. There's where I'm bothered a little. I can give you the history of it.

Q. Was that the Government house? A. No, sir. I was partly talking about the Government house at one time, and another house at another time. There were two houses. I may be mistaken about where Sollitt did live. If he lived there, he lived in a house on that lot, and was considered Mr. Jones' tenant.

Q. I didn't ask for that? A. The house that was the Government office was moved down on the sand lot in '43 or '44, or '42.

Q. Was it when Capt. McClelland was here? A. Yes.

Q. Didn't Capt. McClelland say that if any of you came there he would throw you into the lake? A. He never said so to me. I can tell you what Capt. McClelland did say.

Q. Did the Government put a fence around there to fence Mr. Jones out? A. No, sir, he put a fence there, but said he didn't put it there for the purpose of getting possession, but to keep the sand from being driven off—to keep it from breaking through.

Q. Did this man live this side of that? A. I don't recollect which side of the fence it was? I think it was outside however.

Mr. Fuller offered in evidence a series of tax receipts for water lot 35, in Kinzie's Addition, which were placed in the hands of the plaintiff's counsel for further examination before they would decide whether to object or not.

THOMAS CHURCH, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? That is the opening question here, I believe, with all the witnesses. A. June 2d, 1834.

Q. Where from? A. Buffalo.

Q. What did you do the first year or two? A. I came into this country for what they term prospecting. I looked around and built me a couple of little buildings on Lake street during the season.

Q. Did you know Capt. Allen? A. I did.

Q. Were you down on the works there to see the progress in '34 and '35? A. I was down there very often.

Q. Did you observe them beginning the north pier? A. I saw them at work on the first crib at that time. I was on the south side, at the end of the south pier.

Q. Had you known Wm. Jones before coming here? A. Yes, I lived within twenty-four feet of him in Buffalo, before him or I either came here.

Q. Did you in '34 or '35 know that Mr. Jones had an interest in lot 35 in Kinzie's Addition? Did you know his property there? A. I had it pointed out to me which was his. I heard of it before I left Buffalo. I may not have seen it for one, two or three days after I arrived here.

Q. How often did you see that lot in '34 and '35? A. I couldn't tell you how often; perhaps once a week, especially in '34, not so often in '35.

Q. Describe the shape of the shore on the north side when they began to put that pier in? A. From where they commenced putting in the first piers it would average about a northeast direction.

Q. Did it run off towards the north? A. Yes, sir, when I arrived here the vessel anchored outside, and I came in in a yawl boat; and there was a channel, and a continuous pier on the south side of the channel through to the fort; it was not finished up much, but in a rough state, from this point where I saw them putting in the crib in '34. I knew the shore. I knew it was two hundred feet across, and from that point it was set back some ways. The point, or the most prominent portion of the shore, was perhaps a little south of, or at the end of, North Water street. I had made a map of the place before I came here. My attention was called to this, because it was changed so. I never saw a map as the lake shore was when I came here; the river had broke through and widened the channel very much. You might almost call the channel two hundred feet wide out by the lake, but it ran down middling close to the south pier, near the old river. We came in by the south pier, and the nearest point between the sand on the north side and the pier, was in towards the old river, and

it grew wider as it went out and mingled with the lake; two hundred or three hundred feet wide.

Q. Did you observe the land making north of the pier? A. The first time I observed it after it was put in, a swell six inches high would make sand. The sand would come up and the undertow would take it back. It formed a kind of eddie in there inside the end of the pier.

Q. How fast did it make on the pier on the north side during the year following the construction of the pier? A. I couldn't state exactly, but it made further than people thought, or these witnesses represented. I should think in a year from the time the first crib was put down, it made out half the length of the pier they put out the first year. I know how long that was, but I have heard them testify that it was six hundred or seven hundred feet. I didn't know it was so long, but it made out as much as half of it.

Q. What called your attention to the accretion upon this lot of Mr. Jones'? A. Well, the only man I was especially acquainted with in Chicago, was the foreman of that job, Mr. Jackson, and I was a good deal on the pier. I was once there when he was near by, and he said—

Q. Never mind what he said? A. He said it made out faster—

Q. Tell what you saw? A. My opinion at the time was it appeared to be a kind of a race between the Government and the accretion, and I was of the opinion that the Government would have hard work to get a 100 per cent. the start of it. Six months after they quit work, it was half filled up.

Q. Did you know Mr. Jones' property? A. I suppose that I did. I had heard Mr. Jones say where it was to Mr. Johnson. After Mr. Jones came here I heard—

Q. Do you know the premises? A. I think I know it exactly, or did at the time.

Mr. Arnold.—Ever been on it? A. Yes, as often as I went down there I was on it. When it was very wet weather and bad walking, we used to take a walk down the lake shore to see what the Government was doing.

Q. What do you know of a mark on the pier? A. I had seen a mark. Mr. Johnson said it was Mr. Jones' line.

Objected to.

Witness.—I take it all back.

Q. In a year from the time the pier was began, tell us according to your recollection, how far from Mr. Jones' west line to the water? A. In a year, that is, next August, I had been here about two months when they began the first pier in '34—in August, '35, I should think it was one hundred and fifty or two hundred feet.

Q. Was there any increase that fall? A. Right away, sir, right away. A swell a foot high would make an increase.

Q. How was it in the fall of '35, did it increase? A. Yes, it

increased most in a year after '34 to '35 and '36. The first increase was most.

Cross-Examined by Mr. Arnold.

Q How many feet altogether, in your opinion, had that accretion made in '34? A. In a year from the time they commenced it, I should think perhaps three hundred or four hundred feet.

Q. What time did you come here? A. June 2nd, 1834. They commenced the piers about two months after I came. I have lived here ever since.

Q. You think it increased about three hundred feet? A. Yes, sir, by August, 1835, perhaps three hundred feet. I should rather think more than less.

Q. How far by the close of navigation in '34—the first year? A. One hundred and fifty or two hundred feet.

Q. By the next August you think it came out three hundred and fifty or four hundred feet more? A. Perhaps not so much. I think it was five hundred or six hundred feet, half of what they put in.

Q. Do you know how much they put in? A. Yes, I know all about it.

Q. How many feet? A. By the fall of '35, twelve hundred and odd feet.

Q. It got half way, did it? A. In two years it was half way out.

Q. At the close of the second year, how far? A. Half of the whole length, six hundred feet.

Q. Don't you rather think it was more? A. No, sir. I never measured.

Q. You think it was full that? A. I think it was quite that in two years.

Q. I mean the close of navigation in '35? A. Yes, I should think five hundred or six hundred feet.

MARTIN DELAINEY, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows.

Q. When did you come to Chicago? A. In the fall of '33.

Q. How long did you stay here? A. Until March '35; Then I went to Milwaukee.

Q. Have been there ever since? A. Yes.

Q What was your business while you were here? A. I hired out to work on the pier or harbor. I did a portion of every kind of work on the harbor. On the north pier I helped to prepare the timber, and to put it down.

Q. Did you observe any land making north of that pier, after it was begun? A. I did immediately after commencing the north pier.

Q. Did you help lay the first cribs in the north pier? A. I did.

Q. How far out on the north pier had the accretion made from

the place where you began it, to the time you left here in the spring of '35? A. I couldn't say because I left there in March, and I wasn't on the harbor then, but in the woods getting out timber, and I started from there. The shore, I suppose, was covered with ice.

Q. How late in the fall of '34 did you work down on the shore? A. I think until September or October, 35.

Q. I understand you went to Milwaukee in the spring? A. Yes, and I came back and worked on the harbor in the latter part of summer and fall of '35.

Q. In the fall of '35, how far had new land made on that pier from the place where you began it, from the then water line? A. I should judge from my recollection that it had made about three hundred feet, that is to the fall of '35, in October, when I left.

Cross-Examined by Mr. Arnold.

Q. Delainey, do you know the angle in the north pier near Shapley's pile? A. I have heard of an angle at or near the first crib in the north pier. I have been down there but I have no knowledge of that angle accurately from my own knowledge.

Q. But you have been there and have seen that angle? A. No, sir.

Q. Were you not down there about the time they pulled up a pile, once? A. I was there at the time. I didn't see them pull up any pile.

Q. Did you see them try to? A. No, sir,

Q. You came away before they tried? A. No, sir.

Q. You were there before they began? A. Yes.

Q. In that neighborhood was an angle? A. Yes, I had heard of an angle.

Q. Was the old lake shore east or west of that angle? A. East of that angle.

Q. How much? A. The original shore, or the lake shore where we put down the first pier.

Q. Yes, how much east of that? A. I don't know exactly where that angle is; I was told where there was an angle.

Q. Assume that there was one there, how far off was the lake shore? A. I could tell you from either end of the first crib.

Q. Was the first crib at that angle? A. I don't know. I say I understood there was an angle at or near that crib, but where I can't tell.

Q Was that where the old lake shore was? A. Yes, sir, I think so, near that.

Q. Then you agree with Shapley about the old lake shore? A. I don't know, that is my recollection.

Q. Were you down with Shapley? A. I believe Mr. Shapley was with me, he pointed it out to me.

Q. You agreed with him? A. Things were changed so that I couldn't form an—

Q. You went home without being examined? A. Yes, I went home.

Q. You were brought here as a witness? A. Yes.

Q. After going down with Shapley, you were told that you might go home without being examined? A. No, sir, I went home on business. Business called me to Milwaukee. I went without the consent of anybody. I had to go home.

Q. Did they send for you to come back again? A. No, sir.

Q. When were you requested to come again this time? A. I think it was in the month of February.

Q. Who came to see you? A. Mr. Fuller, with Mr. Sweet.

Q. When you say there was so much accretion, do you know where you start from on the north pier in reference to that angle? A. I do. It is as near as my recollection and judgment to the angle.

Q. Did you consider that the old lake shore was in the neighborhood of that angle? A. Yes, it was east of there.

Q. Do you know how many feet? A. I don't know. I can start from either end of that crib to go to it.

Q. Can you find that old pile or crib? A. No, sir, I can't determine where it is.

Q. You can't determine where that pile or crib was? A. No, sir, I can't. Things have changed so I can't tell any place there hardly.

WALTER KIMBALL, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. September, 1833.

Q. Have you been here ever since? A. Yes, with the exception of about four years, from '43 to '48, when I was absent.

Q. Did you know Capt. Allen? A. I did.

Q. Were you down on the works there to see what they were doing? A. I used to go down there, sir, quite frequently.

Q. Do you recollect when the north pier was put in? A. Yes, sir.

Q. Did you observe any land making on the north of the pier? A. I observed after the piers were put down that the accretion began to form.

Q. How soon after the pier was put down? A. I couldn't tell how soon. I think it was immediately after. I know very soon after that the accretions began to form. I think during the year '34, and soon after the piers were extended, it commenced at the shore, and the accretions began to form on the north side of the pier. I used to be down there frequently out of curiosity. I had no business, but went like others.

Q. Had you goods landed on the pier? A. I think I had goods

landed in '35, but not in '34. I think in '34 they were brought in by lighters through a passage very near the south pier.

Q. Did you observe so as to know where the north pier was begun? A. I think I noticed it commenced on the shore of the lake, and extended eastward.

Q. Do you remember how much the accretion was by the fall of '35? A. I remember that the accretion formed there very rapidly. I should think in the fall of '35 it must have been several hundred feet out. I wouldn't pretend to say how many hundred feet, but at least three hundred, four hundred or five hundred, starting from the shore at the west end of the pier.

Q. From where the pier and the shore originally joined? A. Yes, sir.

Cross-examined by Mr. Arnold.

Q. Did you know Capt. Allen well? A. Yes, sir.

Q. Was he a good engineer? A. Yes, sir, he belonged to the U. S. Army.

Q. Was he skilled in his profession? A. I presume he was sir: I never heard anything to the contrary.

Q. If you should find that Capt. Allen stated in his report that there was only two hundred feet of land made in four years, what would you think? A. I should think it was not correct. I think it must have made more than that in four years. Capt. Allen may be mistaken like myself or anybody else.

Q. Suppose Capt. Allen had made the actual measurement, and his map showed you the result. A. I don't know, sir, he may be right; but my recollection is different.

Q. Might you not confound the accretions that took place in '37, '8, '9, and onwards, with the accretions which you supposed to have occurred immediately after the putting out of the pier? A. No, sir, I think the accretions in '37, '8, and '9, had got far beyond those in '34 and '35 several hundred feet.

Q. How much do you suppose it was in '35? A. I don't know that I can state the number of feet; but it was a constant accretion there all of the time from the commencement.

Q. What was the rate of increase? A. I don't know that I am competent to say how many feet it would grow in so many years. My remembrance might not have been so correct as that of persons who were there oftener.

Q. How long was Capt. Allen here? A. I think Capt. Allen left here in '38 or '9.

Q. He was there daily? A. I presume so; he had charge of the works.

Q. He made reports to the Government? A. I presume so.

Q. It was his business to be there and see what was going on? A. I suppose so.

Q. What time did he leave? A. '38 or '39. I wouldn't be positive.

Q. Do you know the increase from '37 to '38? A. No, sir.

Q. Do you know how it was relative to the previous year? A. It had increased a long distance.

Q. Had it increased as much from '37 to '38 as in all the previous years? A. I think it had, sir.

Q. How do you account for that? A. I account for its doing so by the action of the water increasing it, and the piers extending out as they did. The accretion kept forming constantly.

Q. Suppose the length of the pier to have remained the same, how do you account for the accretion being as much in that one year as in the four years before? A. I don't think it would be. If the pier had stopped, I don't think there would have been much accretion afterwards on the end.

Q. Is Capt. Allen living or dead? A. I have heard that he was dead ten years ago. I presume he is dead.

ARCHIBALD CLYBOURNE, called by defendants, being duly sworn, was examined in chief by Mr. Van Arman, and testified as follows:

Q. Where do you live? A. On the North Branch, about two and a half miles from the city.

Q. Did you ever live in the city? A. I never lived any nearer the city.

Q. How long have you lived there? A. Some thirty-six years, sir, since I first lived there.

Q. Were you here in '33 and '34? A. Yes, sir.

Q. In the city? A. Yes.

Q. Do you recollect of the work going on in the harbor at that time? A. Yes, I think the commencement was in '33. They commenced building the south pier in '33. I think they commenced building the north pier in '34. I was there several times that season that they were building it.

Q. How frequently? A. I couldn't tell how often. I think I was there as often as once a month, and, perhaps, twice a month, part of the time. I was there frequently in '35.

Q. Did you take any notice of the work they were constructing? A. That was my object principally.

Q. Did you know Capt. Allen? A. Yes, sir, very well.

Q. Did you converse with him about it? A. Yes, sir, frequently.

Q. During '34 and '35, did you notice the accretion of land north of the pier and the angle? A. The land commenced forming there as soon as they got the pier extended into the lake. I don't recollect whether the pier was extended further than the sand-bar at first.

Q. You knew it was extended further? A. It was extended during '34 and '35. When it was extended the accretion commenced.

Q. Did it form slowly or rapidly? A. Well, it formed in proportion to the extent of the pier, as the pier was extended into the lake. I don't think it was so observable the first year as it was the second.

Q. How much land do you think formed in one year after they reached the lake? A. I should think in the fall of '35 there was formed as much as three or four hundred feet. I think it had formed three hundred feet by the fall of '35.

Q. Was there anything particular to attract your notice? A. Nothing more than to examine where they first commenced, and where it had extended to.

Q. Did you have any conversation with anybody in reference to the accretion and its effect upon the pier? A. I don't recollect particularly. I had never seen a pier constructed in the same way.

Q. You reckon the accretion from the commencement of the pier, from the shore, in saying there was three or four hundred feet by the fall of '35? A. I think by that fall, three or four hundred feet had formed out into the lake, from the point where the pier first struck the shore.

Cross-examined by Judge Morris.

Q. You didn't make any measurement? A. No, sir, I only measured it from my eye.

Q. It is mere impression now? A. My impression is now that it formed that much by the fall in '34 and '35.

Q. You don't recollect you ever measured, or took any particular notice as to the exact quantity? A. I never measured it. I saw it was making, that was all.

FRANCIS C. SHERMAN, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In April, '34.

Q. Have you been here since? A. Yes, sir.

Q. Did you know William Jones before coming here? A. I knew William Jones, in Buffalo, previous to my coming here.

Q. Which came here first? A. Mr. Jones himself came here before I came. I am not sure that his family came. I think not.

Q. Did you know Captain Allen, and the other Government officers in Chicago? A. I knew Captain Allen, and Mr. Jackson; he seemed to have charge.

Q. In '34 and '35 were you often on the piers? A. In the spring of '34 I was often, frequently on the harbor, and in the summer somewhat, and I was there in '35. I was frequently there in '34, and the spring of '35, or in the winter of '34 and '35.

Q. What called you there in the spring of '35? A. Myself and some other men built a seine for fishing. In the spring of '35, and the fore part of the summer, I was frequently down fish-

ing between the piers, sometimes every day, and sometimes every other day.

Q. This was in the summer of '35? A. It commenced early in '35, and along from that quite into the summer—perhaps more or less during the whole season, but not so much in the latter as in the early part of the season.

Q. In '34 and '35 did you know the lot claimed by Mr. Jones? A. In '34 I knew nothing about the lot. I don't recollect it, that is, I know only from hearsay. I think early in '35, in the summer or spring, may be early in June, or the last of May, '35, as I was fishing, I saw Mr. Jones and some other person down there, measuring, or pacing off. I think they had something to measure with them; and seeing him measuring there, and being acquainted with him, I had some conversation with him about the object of measuring, and he said he owned the property there.

Objected to.

Q. Where was he measuring, or how near the pier? A. He appeared to be measuring from very nearly where the first cribs were put in on the north side, out towards where the water of the lake was somewhere, I couldn't tell within a few feet where it was.

Court adjourned until half past 9 o'clock to-morrow morning.

Eighth Day—Saturday, March 31st, 1860.

F. C. SHERMAN, recalled by the defendants, and further examined by Mr. Fuller.

Q. Did you know Mr. Jones' lot at the time you were speaking of last evening when the Court adjourned? A. No, sir, only from seeing him there. I would like to say, I won't define the particular month that I saw Mr. Jones there.

Judge Morris—Or the year? A. Yes, sir, it was '35, but I couldn't be particular as to its being June. I wouldn't be definite because I was there up to August, fishing constantly, and I couldn't say as to the month.

Q. Tell what you observed of the accretion there that summer and fall of '35. A. Previous to the spring of '35, it increased very fast.

Q. From what point do you start the increase? A. The point of increase was started with the commencement of the north pier, from the water's edge, from the edge of the lake on the north side of the pier. The crib work was commenced in '34.

Q. What was the extent of the accretion down to October or November, '35? A. It would be impossible to tell the number of feet. It must have been, I should say, not less than three hundred feet, and it may have been six hundred feet—that is an approximate estimate. I never measured it myself. I recollect a conversation I had with Mr. Jones at the time. He might have had

some instrument measuring, that drew my attention particularly to it.

Q. Was this increase at that time the subject of observation and remark to you? A. It was, and it was generally with those I was particularly acquainted with; not only the making of land but the effect it was going to have on our harbor. Many of us thought—

Q. Was Mr. Jones' line known to you in '35? A. I knew it from no other reason, only seeing Mr. Jones there, and his pointing it out to me.

Q. Did you observe any marks on the pier? A. No, sir, not to my knowledge.

Judge Morris.—Was your attention called to any? A. Not that I recollect. It was nearly at the west end of the crib-work—somewhere in that vicinity. I couldn' say within a few feet.

Q. How far in the fall of '35 was this lot indicated to you as Mr. Jones', from the water? A. As I said before, I should think it was not less than three hundred feet, and it might have been six hundred feet from this line.

Cross-examined by Judge Morris.

Q. It might have been less? A. I think not. I am as positive of that as I am of anything I didn't measure, that it was not less than three hundred feet. I think it was considerably more than that.

Q. You saw Mr. Jones, you say, measuring from the first crib? A. I didn't say from the first crib; I say it was somewhere near there.

Q. Was the first crib put down on the lake shore? A. Yes, sir, somewhere in that vicinity. I couldn't say the particular line.

Q. He claimed a lot in there? A. Yes, he said he had a lot in there. He was pacing it, I think. He was pacing to measure the distance to the water's edge, getting the quantity of land that was made there.

Q. That was in the summer of '35? A. Yes.

Q. Might you not be mistaken, that it was in the summer of '36? A. No, sir, because it was the first summer, when I and two other gentlemen, now dead, built a seine, and were fishing there, John Calhoun and Mr. Graves. John Calhoun used to fish occasionally, but not so much as Alvin and Mr. Graves. We three owned the seine, and he frequently went with us, but not so much as the other two. I don't know but he owned a share of it, but I think he didn't.

Q. Were you acquainted with John Calhoun? A. Yes, sir; he is dead now.

Q. Was he at that time editor of the Chicago Democrat? A. I believe he was. I believe he hadn't sold out at that time.

Q. How much did it increase in '36? A. I noticed it continued to increase. I don't think it increased so rapidly after the first

year, from the fact that the water was deeper to appearance. I give that as the reason, as it's the only one I particularly think of.

Q. Did you fish on the north side of the pier? A. Very seldom; we drew our seine in the harbor.

Q. Did you observe bars? A. The bars were making, and going away constantly, all along the lake shore, both north and south.

Q. At a blow, would it blow over this new made land up on the shore? A. Yes, the shore was changing, more or less. In a heavy gale of wind, the sand would be driven back; in a calm, the shore would follow out, or the lake would recede as to its height.

Q. Did it make most land in heavy blows, or in calms? A. My observation is, that the quantity of sand hove up was much more in a heavy blow than at other times, but it might not show; but the receding of the water would show the land afterwards.

Q. What was the effect of the water washing up against the pier there? A. The washing up against the pier would have had an effect to raise the bank higher every heavy wind, against the pier.

Q. Didn't the sand make out more above? A. As I said before, it depended on the point from which the wind blew as to the shape of the shore. At times, all along the lake shore, one gale would change it.

Q. How many gales in the course of a spring, or summer, or fall? A. I haven't any record. I couldn't answer with any degree of certainty, any further than we have them frequently.

Q. You don't have them in summer? A. We have them in June—many heavy storms. I couldn't say how many storms in the course of the year. I have no record to which I can refer, where I have set down how many we have. I couldn't undertake to say from recollection.

Q. When was your attention called to this case, and accretions? A. I don't recollect how long ago I was subpœnaed to testify in this case, but a long time ago, down in the old Court-room.

Q. But about the accretions? A. I don't recollect, because I haven't given it a thought since, and I don't recollect the question.

Q. Did you ever testify in this case before? A. I testified in a case between Mr. Johnston and Mr. Jones, at the old Court-room in the Saloon Building.

Q. Did you testify on the subject of accretions? A. Whether they covered the whole ground, I don't know, but I think that did come up. It's a thing I haven't thought of since, until I was called on to come here.

Q. You are about as certain of that as of the amount of the accretion? A. I know I have testified.

Q. Do you know what you testified to? A. No, sir. My recollection serves me that these questions were asked me, and I might have stated the quantity. It is a thing I have not thought of. Of

course I answered the questions, to the best of my knowledge, at the time.

Q. You answered the question as to the accretion, from the best of your knowledge? A. It is my impression that I did.

Q. It is a mere impression on your mind that it is so? A. Yes.

E. D. TAYLOR, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. Colonel, when did you come to Chicago? A. In the spring of '35.

Q. Were you engaged in any public business on coming here? A. I was Receiver of Public Moneys.

Q. Where did you live? A. On the north side of the river, near the north pier.

Q. Was there a street between you and the river? A. I think there was.

Q. Did you know Capt. Allen? A. Very well.

Q. Did you know the other officers and employees? A. I knew them at the time, but now could not name their names beyond Capt. Allen.

Q. Were you often on the pier in the season of '35? A. I couldn't state how often, but I was very frequently. It was an evening walk for us. It was a resort with most of us, where we used to walk out almost every evening.

Q. When did you observe the growth of land on the north side? A. Do you mean the year '35?

Q. What did you observe in respect to the lake shore? A. I discovered that the land, as soon as Col. Allen extended the pier, commenced making, and the more he extended it the more rapidly it seemed to make. The more it was extended the more the water receded, and it took possession of where the water was before. I think it accumulated most rapidly near the shore. It came in towards the crotch. It always had its base in the water, like anything else, and kept coming up in that way. As to the particular points I couldn't say. It would form a reef, as every one knows, where they pushed the pier outside. As they pushed it out it would fill in further. It was observable to every one who went there.

Q. How much was the increase by the fall of '35? A. I couldn't say as to the number of feet, but it was very considerable, sir. I should think two hundred or three hundred feet. It might be a larger sum by the fall of '35, or the spring of '36. It seemed to me to have got into acres instead of feet. It went out very rapidly.

Q. Do you recollect the season of '35? A. Yes, sir, it was very boisterous—the most boisterous I have seen in Chicago. I have never seen such a season.

Cross-examined by Mr. Arnold.

Q. You are of the impression, by the fall of '35 it was measured by acres? A. I think so.

Q. How many feet on the north side of the pier easterly did it extend? A. I couldn't say, but two hundred or three hundred feet, or a much larger number of feet. By the fall it was more.

Q. I speak of the time when acres were forming? A. Well, about the coming of that winter, and more particularly the spring of '36, it seemed to me to accumulate by acres.

Q. How many feet would the south front amount to? A. I couldn't say.

Q. As near as you could judge? A. I should have no hesitation in saying, right along the pier, and off from the pier a considerable distance, when it first made the bar, which form a flat bar of a few feet, which a man wouldn't notice, an abrupt bar one would notice, but I think it might have increased a long ways before they would have noticed it—that fall, I say, it was two hundred and fifty or three hundred feet—probably more. I was paying no attention to it. If I heard the distance then, it has passed my knowledge.

Q. You think it was two hundred or two hundred and fifty feet? A. Yes, sir, certainly, not less than that.

Q. From what point do you reckon in getting the two hundred and fifty feet? A. From where the water had been when I went there in the spring.

Q. Do you reckon from the west end of the north pier? A. From the commencement of the shore I do. It was west, certainly.

Q. Was it the west end of the pier? A. I don't recollect how far the pier went. The pier was commenced when I went there. Captain Allen was driving piles. That was in the spring of 1835, in April, or the latter part of March when I came here.

Q. Do you recollect how near you started from the west end of the north pier in getting that two hundred feet? A. Yes, sir, it was where you might call it started. It was very near where the water was when I moved there.

Q. Did you fix that point by the end of the north pier? A. It was not the end of the pier; the pier extended some distance this side of that. The east end was in the water, but the west end was on the land.

Q. Did you reckon it from that point? A. That I couldn't say. I couldn't fix any particular point; I only judge from wherever the water was at that time, without any record. I know Captain Allen was at work on the pier at that time. He commenced further west.

Q. How far from the Kinzie House? A. Probably fifty or one hundred or two hundred feet, I don't know. It was not very far from where he commenced his timbers to the warehouse, but it was east of that point, fifty or one hundred or two hundred feet.

Q. How far from Kinzie's warehouse was the west end of the pier? A. Oh, it was several hundred feet.

Q. Was the west end several hundred feet? A. No, sir, I meant the west end.

Q. You said the pier was fifty or one hundred feet from Kinzie's warehouse. A. I say it was fifty or one hundred feet. I can't fix it. I can guess, but it wouldn't be worth while.

Q. Wasn't your estimate a guess? A. I say it was two hundred or three hundred or four hundred feet. If I had to swear positively, I should say four hundred feet rather than two hundred feet. We saw the west end was coming in—

Q. Will you answer me; if you please, without so much talk round about? A. You may ask your questions in your own way, I will answer them in mine.

Q. Answer them directly, if you please? A. I will in my own way.

Q. Will you tell the distance from Kinzie's warehouse to the end of the pier, in the spring of '35? A. No, sir, because I don't know.

Q. You won't tell? A. I won't.

Q. You won't give me any sort of idea of it? A. I don't know within two hundred or three hundred feet. I don't remember.

Q. Was any sand on the south side of the north pier where the river now runs through, in the spring of '35? A. It strikes me there was. He was dredging it out then. I couldn't tell how much. I can't tell any number of feet, it has been so long a time.

Q. Are you sure they were dredging in that year? A. Yes, sir, I think so. They were dredging somewhere there. They had a pile-driving and a dredging machine. I am not certain about it.

Q. Were they dredging between the two piers? A. I think they were. They had a pile-driver and dredging machine. I can't remember, it is so long ago. I remember his driving piles, but I don't remember the dredging.

Q. Are you sure that there was some sand between the piers, that summer? A. I am not sure that it was entirely dry between the two piers. I think there was water between the two piers.

Q. Clear across? Yes.

Q. I desire to know how fresh your recollection is? A. It's only in general terms, that's all I can say.

Q. Do you recollect how far out the pier was in the spring of '35? A. I couldn't say. It was several hundred feet. I couldn't tell except in a general sense. It was a great deal in the spring of '35. It was out some distance, but not finished. I couldn't say how much.

Q. Could you tell within two hundred or three hundred feet? A. It would be guess work. I think it seems to me that in the spring it must have been three hundred or four hundred feet. It

might have been less or a little more. It was out some little distance, but not finished. He was driving piles up where they commenced filling in stone during that year.

Q. Your opinion has not been formed as to the extent of the accretion in any one year? A. No, sir, but though I didn't see it, I dare say the first wave made something.

Q. That is a mere opinion given after nearly thirty years? A. Yes, sir, it was just my observation when I lived there, and I walked out and saw the sand making out. I didn't know where it was.

Q. If you should find by reference to Capt. Allen's reports of observation made on the ground at the time that he places the accretion at a greater or less amount than you, what would you think? A. I should have great respect for his opinion.

Q. You would think yourself mistaken? A. It might have some effect of that kind in regard to what come within his official duties. I should have very great respect for him. I thought he was an honest man at the time.

Q. You think his observation made at that time would be more correct than yours? A. Yes, sir, I should certainly think so.

Q. In getting that estimate of the number of feet of accretion, do you measure those two hundred or three hundred feet from the west end of the pier, near Kinzie's warehouse, or some other point? A. I should start from a little beyond that. It strikes me that the water on the outer edge of that pier didn't come clear up to the commencement. I might be mistaken in that, but I think so. There it commenced receding, I noticed.

Q. Could you give any idea of how far east of Kinzie's warehouse you commenced, in estimating the accretion? A. From the pier to Kinzie's warehouse it must have amounted to more than one hundred feet, as they kept moving in timber. They would haul them there on the sand-bar.

Q. Your opinion is that it was at least one hundrod feet from where you started with your estimate to measure the accretion? A. Yes.

Mr. Fuller—If Capt. Allen said there was only fifty feet of accretion, would you trust him or your memory? A. I should differ with him or any report saying it was only fifty feet. I wouldn't agree as to that. I think I am right in that.

EDWARD H. HADDOCK, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. May 17th, 1833.

Q. Where did you live in '34 and '35? A. I have always lived in the south part of the city. I lived the first year, in '33, on Water street. In '34, I lived on Lake street.

Q. You were down on the north pier in '34 and '35? A. I was

down there that year undoubtedly. I furnished the Government or workmen the bread and provisions to some extent.

Q. Had you any business there in '34 and '35? A. I think not particularly. I might have sold them some timber.

Q. Did you know Capt. Allen and the Government employees on the piers? A. I did.

Q. Did you observe the land making out north of the pier after it was put in? A. Yes, sir, I observed it.

Q. How soon after the pier was begun? A. I have no doubt I saw it immediately after the commencement of the pier.

Q. Did you observe its growth within a year? A. I think it had increased very rapidly.

Q. Was that increase noticeable in the fall of '34? A. I have no doubt it was.

Q. Did you observe it? A. I think I did.

Q. Did you observe it in '35, during the summer and fall? A. I presume I noticed it every year.

Q. What kind of seasons were those of '34 and '35, as respects weather? A. I don't remember particularly.

Q. Can you estimate the increase you observed there within a year from the commencement of the north pier? A. No, sir, I couldn't to any definite extent.

STAR FOOTE, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q When did you come to Chicago? A. August 2d, 1833.

Q. You have been here ever since? A. Yes, sir, pretty much.

Q. Did you know Capt. Allen and the Government employees on the piers? A. Yes, sir.

Q. Did you know Alexander McGregor? A. Yes, sir, I became acquainted with him that fall.

Q. Did you know the lot in which he claimed an interest. A. I was down there one day and he showed me his lot.

Q. Tell whether that lot was the one since claimed by Mr. Wm. Jones? A. He told me he sold it to Mr. Jones.

Objected to.

Witness—That's all I know.

Q. Did you observe the land making above the north pier after they commenced building it? A. Yes, sir. The north pier was commenced in '34, and it increased that year and has ever since, I guess.

Q. Did you observe the increase in '35? A. It increased on there constantly. I was down there and could see the increase as I was fishing.

Q. Did you ever see Mr. Jones, or any one, down there measuring the accretion? A. No, sir, I don't think I did.

Q. Do you know whether Mr. Jones fenced the property? A. There was a fence put up there by somebody.

Q. What amount of new made land accrued there in a year from the time the north pier was begun, from '34 to the fall of '35? A. I should think three hundred or four hundred feet. I didn't measure it?

Q. From what point do you estimate that increase? A. From the edge of the lake or water.

Q. Was that from the place where they started the pier, very near the water's edge, or where the land dipped to the water? A. Yes, sir, from where they started the pier, towards the lake, at the edge of the lake.

Cross-examined by Judge Morris.

Q. How far is that from the angle in the north pier? A. I don't know about the angle. I never noticed it.

Q You never knew there was an angle there? A. I have heard them say so here, but I never noticed it myself.

Q. Can you fix any point on that pier where the old lake shore was, from which you made this estimate? A. Not now.

Q. Didn't you do it at a former trial? A. No, sir, I did not.

Q. Were you a witness? A. I was on the sand-bar case once. I was subpœnaed here, but was not called on. I have been called on once.

Q. Didn't you testify once? A. Yes, sir, I did once in Mr. Jones' and Mr. Johnston's case. I guess that was the first trial.

Q. Not since? A. No, sir, not since.

Q. You didn't testify on the third trial? A. No, sir, I believe not. I was subpœnaed here.

Q. How long since you testified? A. I can't tell, I never kept any date.

Q. Do you recollect what you testified to? A. No, sir, I don't.

Q. Are you a good hand to estimate distances? A. Well, tolerable. My eyesight is pretty good yet.

Q. Did you make an estimate when you were down on the pier? A. No, sir, only I have been there and it has been talked over a good deal. Mr. Jones and I have talked it over some.

Q. Mr. Jones, the plaintiff? A. Yes, sir.

Q. When did you talk with him? A. Almost every year.

Q. You have kept up a conversation almost every year? A. We have talked about it.

Q. Can you tell how many feet there was actually added to the shore? A. No, sir, I didn't measure it.

Q. You are sure you didn't measure it? A. I am.

Q. Can you tell within fifty feet of where the increase went to the first year? A. No, sir.

Q. Can you tell within one hundred feet? A. I don't know that I could point out the place now.

Q. In estimating do you just guess at it? A. Of course, I

have to guess at it. I never measured it. I don't think I have got any too much.

Q. How wide was the sand-bar there? A. I think it was about two hundred feet.

Q. How far was that east of the Kinzie House? A. The Kinzie House, I think, is seven hundred feet from that—is six hundred or seven hundred feet from the water. The Kinzie House stood up this way a good ways at that time.

Q. You think it was about two hundred feet across the sand-bar? A. Yes, sir, perhaps more. I didn't measure it.

Q. Do you know how much you testified it was on a former trial? A. No, sir.

Q. Didn't you state that it was four hundred feet? A. I don't know but I did. I don't remember.

Q. Now you fall two hundred feet? A. I think it must be that. I wouldn't overreach anything.

Q. If you have found yourself mistaken one-half in that since the last trial, might you not be mistaken in regard to the lake shore? A. I think not.

Q. Is your recollection any better now than it was eight or ten years ago? A. I don't think it is.

Cross-direct examination resumed by Mr. Fuller.

Q. Do you recollect being sworn at all before as to the sand-bar? A. I have been on this case once.

Q Do you recollect testifying as to the width of the sand-bar? A. I think I did. I don't know.

Q. Do you recollect what you put it at? A. No, sir.

Q. You say you talked with Mr. Jones from year to year? A. Yes, sir, we being from one place, there was a great deal said about the sand-bar.

Q. When did you commence talking about it? A. I talked with Mr. McGregor, who was from Buffalo; he owned it, and I talked with him; when Mr. Jones owned it I talked with him.

Q. What about? A. About the accretion.

Q. They were both neighbors, and called your attention to it? A. Yes.

Judge Morris—Did you talk with Mr. McGregor in '35? A. In '33.

Q. Did you talk about the accretion in '35? Yes, sir.

FERNANDO JONES, called by the defendants, being duly sworn, was examined in chief by Mr. VanArman, and testified as follows:

Q. Where do you live? A. Chicago.

Q. How long have you lived here? A. Since the spring of '35.

Q. Where did you live in '35? A. In Chicago, part of the time, on the corner of Randolph and Dearborn streets, after my father moved here; before that on Water street.

Q. Are you acquainted with Kinzie's Addition, and lots 34 and 35? A. Yes, sir, I know the location of them.

Q. How early did you become acquainted with these lots? A. When I first came here in the spring of '35.

Q. How came you to notice them? A. I knew that my father was interested in them before I left Buffalo, and I had seen a plat of it that Mr. Thomas Church had made. At that time I was in the employ of Mr. Church, in his store.

Q. So that you had seen a plat before you came here? A. Yes, and I knew my father was interested in them when I landed. I landed on the spot nearly, or within a few rods of the place, and I noticed it when I first landed.

Q. How long before you were there again after that? A. I was there the next day, and for a week or so. I was there every day while the vessel I came in was there.

Q. Was your attention at that time called to the accretion of the lots? A. Yes. Mr. Jackson and old Chris. Birkenboil, and Mr. Sawley (?) and myself were speaking about it before my father came to show me the spot.

Q. You were acquainted with lots 34 and 35 then? A. Yes.

Q. How did you know? A. First, Mr. Jackson and these other parties I was down with, before my father showed me, directed my attention to a mark—

Objected to.

COURT—State what was done, not what was said? A. My attention was directed to a mark on the pier. I was shown the line by those persons down there. I think all were together at one time. My impression is that all that I have mentioned, Jackson, Sawley and Chris. Birkenboil were together when I looked along there and saw a notch in the pier, cut down twenty or thirty feet from the end.

Q. Where was that notch? A. The pier was as high as my head, so that it was difficult to get on to it there, and that notch was cut in the side of the pier with an axe, apparently about half-way from the sand to the top. It looked as though it had been cut with an axe, that some one reached down. That is my recollection now.

Q. Had you any further means of knowing that line? A. I marked a notch in the pier at that same place at that time or before my father came here, within two or three days of that time that I first came here. I was looking at the line.

Q. Where did you make the notch? A. On the pier—a notch in the corner with an axe—a very dull axe.

Q. What guided you in making that notch? A. The notch below.

Q. Were you ever present afterwards when that line was attempted to be ascertained? A. I was present when my father and other parties looked over the line. My impression is the line

was supposed to be ascertained before, and this was supposed to be the line. I never ran it.

Q. Do you recollect a north and south fence upon it? A. I don't recollect the fence being built. I was gone at that time. I found the fence there when I came back.

Q. Was it on that line corresponding with that mark? A. I know the fence commenced at that mark, but I don't know what line it followed on the lots.

Q. You only know it terminated at that mark? A. Yes.

Q. How do you know that? A. Because I made another mark after my father came here. When he went down with me and measured as near as we could on the pier there, the width of the lot, sixty feet, and made another mark. When I came back, I found the mark I first made, but I couldn't at first find the mark west of it, but upon examination I found the post covered it. It was a cedar post, spiked against the pier. It covered the mark between 34 and 35. It hid it so that I couldn't see it.

Q. The first time you were there and saw that mark before your father arrived here in September, '35? A. Yes.

Q. Did you notice then whether that mark was on the land or water? A. It was over the land.

Q. Have you any means of knowing how far at that time the land extended out of that mark? A. Yes, I measured to get the right lot, I supposed my father had bought, and the land was still beyond that, another lot, and a little more at that time.

Q. So that it made two lots? A. Yes.

Judge Morris.—More than sixty feet? A. Besides that lot. It had made two lots and a portion of another; the lots being sixty feet, it would be one hundred and thirty or one hundred and forty feet east of the east line of 35.

Q. The east line? A. Yes, sir, beyond the east line of 35. That was about the amount after I first came here.

Q. Then it had made one hundred and twenty feet beyond the east line of 35? A. Over that, about one hundred and thirty or one hundred and forty feet.

Q. How do you know? A. I was down there frequently, and made scratches on the pier, and kept noticing how fast it would make. I recollect very well it made a rod in one week, from one Sunday to another.

Q. How do you know? A. Because I made marks on the pier, and if there happened to be a storm during the week, I would go down; I would go down Sundays, for I was employed in a store; then I would notice how far it had made.

Q. In ascertaining this increase of one hundred and thirty feet by the spring of '35, how did you measure? A. I measured the first lot to ascertain the width with a pole, and it was sixty feet; after that I got the pole sometimes, and sometimes paced it as I

could. As fast as it made, I would make a mark on the pier and drive in a spike.

Q. Was your attention ever called to these marks afterwards? A. Yes, I don't know as I can recollect the date, but it was about the time some lots were deeded or some arrangement was made, or some bargain was in progress about a couple of lots deeded to—[pausing.]

Q. Slater (?) & McClelland? A. Yes, I think it was.

Q. When was it? A. I think it was about 1844. My impression is it was after this arrangement, and these deeds were made or to be made.

Q. Was your attention called to them in reference to this suit after this contest arose? A. I examined myself. I don't think any one called my attention to it. I have examined them.

Q. Did you find them? A. A portion of them.

Q. Which portion? A. The mark on the west line of lot 35, between 34 and 35, was there, and the mark at the east line of 35, and then, for, perhaps, one hundred feet the lines were gone, and then beyond that there were still some marks I had made, and a crooked spike I had driven in with a stone. I recollect of driving it in and hurting my finger.

Q What did they indicate? A. These spikes indicated every sixty feet.

Q. In what season were they driven? A. I think those that were driven regularly every sixty feet were all driven in '35. I left in '35, and went to Detroit to school in the fall.

Q. Up to the time you left, how much accretion had formed from the time of your arrival here? A. I think it was six lots. I think it was five or six, perhaps it was five. My impression is, I kept it in mind when I went away, that it was six lots. I don't recollect whether it would include 35 or not. It was certainly five lots beyond the west line of 35.

Q. When did you return? A. In the spring of '36.

Q. What did you observe? A. There had been but little increase during my absence. When I left it was late, and I was there on the shore. When I came back in the spring there was not much increase.

Cross-examined by Judge Morris.

Q. Did your father send you on with the family in the spring of '35? A. No, sir, I came on with Mr. St. Clair, or John Smith and his family, by water, before my father's family.

Q. How old were you? A. I was fifteen years old within a day or two after I landed here. I was born in May, 1820. I'll be forty next May, I landed on the 3d, and my birth-day was on the 26th. I was here on my birth-day.

Q. Had your father any other lots? A. Yes.

Q. Did you go around and make a survey of them? A. I went around, but didn't make a survey of them.

Q. Did you make any marks by which to find them? A. I didn't find it necessary to make any marks to find them.

Q. Were they on the prairie? A. Those that I knew were not on the prairie—what you might call the prairie. They were on Lake and South Water streets, at Dearborn and Clark streets. The house he had bought I knew by the store on the lot. This house was where the Young America now stands. I had no difficulty in finding it, nor in going back to it.

Q. That's the Revere House? A. Yes.

Q. Where have you been residing for the last ten or fifteen years? A. I think I have been residing here for the last ten years.

Q. Were you here at the former trial? A. I was here at one trial.

Q. What one? A. I think it was the last one. At the time they drew the pile out.

Q. Were you down there when it was drawn out? A. No, sir.

Q. I believe you made a good many maps for your father about that time? A. I have made a good many maps for him during the last fifteen or twenty years. I have maps of this very identical property.

Q. Didn't you copy off pretty much all the maps that went up with the record? A. I think I did. I copied a good many maps in reference to this.

Q. Did your father know any thing in regard to your driving spikes along the pier? A. I think he was down with me and saw me make some marks. I don't know that he saw me driving the spikes.

Q. Did he know that you had made marks along the pier? A. I suppose that he did; he was down there and he knew at the time.

Q. Did he know you were familiar with these boundaries you were marking on the pier? A. He knew I was marking.

Q. Did you show him the marks? A. I think I did.

Q. Were you ever called as a witness in this case before? A. No, sir.

Q. You don't know any thing about what lot it was you were marking off, except from what you heard others say? A. I do.

Q. How? A. I know that the lots I marked off, and these marks were there after the lots had been surveyed and fenced in and recognized on the plats as being lots 34 and 35. These marks were on these lines.

Q. Who made the survey you speak of? A. I mean after the fence was put up.

Q. Who made the surveys for this fence? A. I don't know, sir.

Q. Do you know what lots they were except from mere rumor, when you say there were fences put there? A. I do know it from knowing the number of lots, and who owned them, and from the buildings on them, and what lots were called certain men's property, and certain lots that were numbered certain numbers.

Q. When did you see the houses and fences? A. At different times when I have been in the city for the last ten or fifteen years. The first I knew of any fence there, I think, was in the summer of '44.

Q. Was it not in the summer of '47, and wasn't the first fence, between 34 and 35, put up by Keith and others, who leased lot 34 from Mr. Johnston? A. I think there was a fence there when I came home; after I had been gone south. That was in '44. I think there was quite a portion of a fence. There was quite a substantial fence on the north line, or along the north side of the accretion; some barricades that had the appearance of a fence were thrown up by the government to prevent the sand from washing over into this place.

Q. When did you first see a fence on the west line of lot 35? A. My recollection is that there was a fence, not so substantial a fence as the other, and a part at that mark when I came home. Who put it up I don't know.

Q. You don't know any thing about it? A. No, sir.

Q. If the notch was made in that pier low down, about half way at that time, and the land was made over that, would it not be perceptible now, sir? A. I don't know, sir; I have not looked for it.

Q. When did you last see it? A. I don't recollect the date, but I recollect the circumstance, for myself and my father went down and talked with Mr. Keith and Mr. Carpenter, and father and Mr. Carpenter had a little difficulty about the terms of the lease. Probably it was six or seven years ago. I saw it then.

Q. That you say was right where the cedar post was spiked on to the pier? A. Yes.

Q. Don't you know there is no such notch for five feet either way from that place, and that the cedar post had been taken away at the last trial? A. I don't know.

Q. Did you see that post there five or six years ago? A. I don't recollect what time I saw it; I think the last time I recollect seeing it, was longer ago than that.

Q. Wasn't it a round post, not thicker than your arm, and not more than four inches in diameter? A. It was larger than my arm, twice as large. My recollection is, that it was a round post, but it seemed to me to be hewed some, and an irregular kind of a post.

Q. Was the pier perpendicular or leaning? A. The pier was

straight, or nearly straight, at the time the notch was made. I didn't notice that it was particularly out of the way.

Q. Can you swear that there is a notch within five feet either way from where that line strikes the pier? A. I don't know anything about it; I have not looked at it for four or five years.

Q. Can you swear there was one five years ago? A. No.

Q. Within ten years? If you can go and find one, you will find what I never could, and I have tried with both my eyes and discovered none; and I have heard his uncle swear it was there. You said you saw that notch in the pier five or six years ago, can you go any farther back? A. I think it was as far back as six or seven years ago, certainly.

Q. Was it there at the last trial of this cause? A. It was not.

Q. Wasn't it? A. I think it was not there at the time I was down there. My recollection is, that I looked to see if the pier was broken down there, and that it was. My impression is that the notch wasn't there then. My impression is that I looked for the notch and it was gone.

Q. Will you swear that at the time of the last trial, there was a single timber of that crib gone, and that they were not all there, and all sound? A. Will I swear?

Q. Yes, will you swear any were gone?

Witness, (turning to the Court)—Does the gentleman wish me to be sworn over again, or what?

Q. Do you swear it was there? A. I think I am ready to say it over again.

Q. You understand me, will you answer? A. I understand you vey well. My impression is that I looked for that notch the last time I didn't find the notch there.

Q. I asked about the last trial? A. I think it was at the time of the last trial.

Q. Were any timbers gone at the last trial, off of that crib where the line strikes the pier? A. My impression is that it was at the last trial that I looked for the notch, and that there were timbers gone from the top. It might not have been at the last trial, but at a later time than that.

Q. I mean the notch between the top of the pier and the bottom. That, you say, was when you came home? A. I hadn't any reference to that notch below there. I had reference to the notch on the corner this way.

Q. Had that one gone, at the last trial, that you made? A. I think at the last trial I looked for it and didn't find it. It might have been since the last trial.

Q. You can't state when you saw that one just above ground, that your uncle had made, that was shown you? A. I think that was in '44. I recollect seeing it in '44; but that particular notch, I never—[pausing.]

Q. Don't you know there is no such notch there at all within

five feet of where the line strikes the pier? A. I don't know whether a notch can be found there or not.

Q. Are not some notches to be seen along there, made by those who hewed the timbers, and none others? A. I presume there are notches. I don't know anything about it; but from my knowledge of hewing timber, I should think likely there were some notches there.

Q. How could you tell the notch made by your uncle from those made by the workmen? A. Because there are two notches. That is the way I located the notch at the top of the pier, and the notch a little below. I found a notch at the corner of the pier, and chopped a little at the side. I found a notch at the corner, I think, and chopped it a little to correspond with the notch below.

Q. Were you down in the spring of '35? A. Yes, sir.

Q. Do you say that pier was built up in the spring of '35 to the top? A. I think they were working in '35; but whether it was on that part of the pier I don't know.

Q. Do you say that pier was finished up where the line strikes, when you made these notches? A. I think there were no timbers after I made the notch on the top of the pier, placed on it.

Q. You say you have seen it every year, year after year, every Sunday, and almost every day; can you tell whether it has been there since? A. There was a notch in the top of the pier.

Q. Was that the one you made in '35? A. I think it was.

Q. Do you know it was so? A. To the best of my recollection the notch was on the top of the pier—the same notch. At any rate I was governed by a notch that was on the top of the pier, which I supposed I made at the time. My recollection is I made that notch at that time.

Q. Your recollection is you made the notch at one time? A. I know I did.

Q. Was there any other? A. I made another at the east line of 35.

Q. Are they there now to be seen? A. I don't know. I havn't been down there for three or four years.

Q. When did you last see these notches? A. I think the last I noticed these three notches out there must have been somewhere between '47 and '50—ten or twelve years ago.

Q. Are those spikes there now? A. I don't know, sir.

Q. When did you last see them? A. I think I saw a couple of spikes, that I recognized as those that I drove, since this last trial—since the decision was made. I think so. My father and I went down and looked at them.

Q. Have you ever shown them to anybody else? A. I believe not, sir.

Q. Did you always go alone? A. No, sir, I frequently had company.

Q. Did you call their attention to these marks? A. I don't

know that I called their attention to them. They must have known, because I made the marks.

Q. Who were these men? A. The men about the harbor. I recollect particularly Mr. Jackson, and old Chris. Berkenboil, and Mr. Hooker, that was clerk for Walter Kimball. They are all dead, I think.

Q. Is there anybody living that saw these spikes, except you and your father? A. I don't recollect now. I never thought about it. I don't recollect any one. It seemed to me there was some one along with my father. I know the circumstance of my going down there to ascertain something about the lines of these two lots I have mentioned—where McClelland and Slater's (?) were located.

Q. What lots had they? A. I don't know that they were numbered, but a specific number of feet from some point.

Q. How did they get them? A. I don't know. There was something about some arrangement or negotiation in reference to a couple of lots there, but who they got them of—(pausing)—I think my uncle and my father. I don't know who. I only recollect that there was a couple of lots that there was a negotiation about. I think the lots were measured off a certain number of feet from some point. I don't know where now; but I knew something about the location after going down with my father at one time.

Q. But where they began or ended, or struck the pier, you don't know? A. I couldn't locate it.

Q. You have forgotten all about it? A. No, sir, I have not forgotten all about it; I only couldn't locate that. I think I could in '35.

Q. Could you locate these lots he contracted for in '45 or '46? A. I think so.

Q. When was that? A. I think it was about that time that I knew anything about it.

Q. Wasn't that the time Slater and McClelland were here, in '42, '3, '4 or '5, along there? A. I was not here in '42, but when I came home, or a short time after, I have a recollection of something about it. I went south in the winter of '40 or '41, and came back in the spring of '44. From that time I remained here most of the time until the present time. I have been away sometimes six months in the year. This place has been my residence ever since.

Q. Did you state that there were accretions in the spring of '35? A. No, sir, I don't know anything about the accretion when I came here in the spring. I merely meant to state where I found the lake shore. Whether it was an accretion or not I don't know.

Q. Do you know where there is an angle in the north pier there? A. I think, at the time we were down there at the last trial, when they took up the pile, my attention was directed to a

slight corner in the pier west of where they were at work—not far west; from forty to sixty feet west of where they were at work taking up that pile—perhaps not so much as fifty feet. I should think perhaps less rather than more. The pile was east of the angle some little distance, forty or fifty feet.

Q. How long was that pile—nineteen feet? A. I should think not so long. I don't recollect measuring, but my impression is it was sixteen feet.

Q. Was it not sixteen feet below the surface of the ground? A. I should think not. I don't recollect measuring.

Q. How many days did you work to get up that pile? A. A couple of days. I think we were there more than two days. I think we were not at work more than three days.

Q. How many men were employed? A. I had one man digging, and another man was bringing a chain: I think we had three men besides myself and lookers-on. Those who were down about the harbor, and had nothing else to do, would take hold and assist.

Q. Was not the object of taking it up to show that that was the sand-bar where it was driven? A. The most I know of it was from the conversation of those about there and the witnesses. Some insisted that it was a long pile, and some that it was a short pile. So far as I was concerned I knew it was a long pile, and so far as myself was concerned I had no particular object.

Q. Were not your father's witnesses swearing that that was the sand-bar? A. I don't know.

Q. Were not those who were engaged in taking up that pile witnesses? A. I think there were, perhaps, at different times, some witnesses down there. I think there were several witnesses down at different times, and I think perhaps some of them assisted in fixing the chain and giving some directions, and helping a little. Others besides that did. Some of them I employed; some of them I treated. I think some witnesses were there.

Q. Did you take them down, or did they take you down to work? A. No, sir, they didn't.

Q. Who sent you there, and what was the object? A. I went at my father's suggestion, and the counsel's in the case. I think the object was to ascertain the length of the pile. That was my impression. I heard it mentioned whether a long or short pile would be driven in with a hand pile-driver, or with a heavy or light one, and whether that pile had been in the sand or water. My impression was that they were to judge whether it was driven in the sand or water by the length.

Q. It was to ascertain whether that was the sand-bar or lake? A. That is my impression now—something in reference to it.

Q. Was it not an experiment with a view of finding whether that was not the sand-bar, as the witnesses for the defence who were there testified?

Objected to. Objection overruled. Defendant's counsel excepted.

Witness—I recollect that while we were at work there was a discussion between different persons, and witnesses joined in it. Some witnesses and some persons thought it would be very difficult. I can tell part of them. I said myself it was difficult, and gave my reason.

Q. Did Tom Cook say it was difficult? A. I recollect that some party came down there—I don't recollect the name—who said it would be difficult to draw it up. I know I agreed with him. I think McGregor said it would be drawn easy.

Q. Did Burdick? A. I think not. I think Burdick agreed with me, too, in my recollection of how the pile was when I first came here. McGregor was there. I don't know whether Burdick worked at the pile or not. I think Morgan Burdick was there. I saw him about the time.

Q. Were not he and McGregor superintending the taking up of the pile and insisting that that was the sand-bar there? A. I think not, sir. I have no recollection of their superintending it. I think I was boss of that job.

Q. What was your object? A. My object was to obey the direction of my father in getting it up.

Q. Where do you say the lake shore was? You seem to differ with your father's witnesses? A. I have not sworn that I differed with them.

Q. What reason had you for believing that that pile was sixteen or seventeen feet long before it was taken up? A. Because I saw these piles along there before the sand had filled up, while it was difficult to get on top of the pier. I saw piles driven there. There was a little rock along there in places scattered along, and piles were there, so that they stuck, some of them, eight feet out of the ground.

Q. Did you see the piles in the water? A. Yes, they had been before; when I came here in 1835, it was sand. I can't locate that pile.

Q. Why did you suppose it was deep in the ground? A. Because it was my recollection that they were driven in the empty cribs and reached a good ways out of water—out of what before had been deep water sometimes. We found this pile only a little distance out. We dug around it and got a chain around it. That was my opinion. The pile was on the north side of the north pier, just on the inside of it, not immediately at the north side.

Q. There was water along where some of these piles were driven? A. My recollection is, while they were fixing part of it, looking over I saw sand blowing in and filling it up, and some places there was rock in the cribs, and some places water, particularly when there was a storm, the water would roll along shore there.

Q. You saw water there in 1835, and that was the reason you

supposed it was one of these piles driven into the lake? A. I don't recollect that particular pile as having been in the water, but there were piles along there that, while there was sand on the north side, were sticking out of the ground a good ways, and a little ways above the pier.

Q. Why did you suppose that this was a long pile? A. From my recollection that these piles along there were generally sticking up a good ways above the surface of the stone, or where it was water or sand, the pier was high; my impressiou was that the pier was high; so high that if I had got down I couldn't reach up. I thought it must have piled up.

Q. Didn't you tell them, at the time you were taking up this pile, that you knew it had been driven into the lake? A. No, sir, I certainly did not. I didn't know where it was driven.

Q. Was there sand there when you came in '35? A. There certainly was. There was sand north of it. There was no sand in the bed of the river between the piers. I think there was none above the surface of the water.

Q. Are you sure of that? A. I think when I landed here there was no bar through there, but I recollect when the water was low, or the sand had washed over, there was sand there. My recollection is that when we landed we didn't come to a bar at all. We came to what I supposed was the old bed of the river, or near where there was some steps went up on the pier. The steps I supposed were about where the present angle is. It was not far from that.

Q. Was the bed of the river east of that angle? A. It had the appearance on the pier of having been extended across from the east towards the river, until it came near the bed of the river. I know there was room enough to land on a little sort of spit, and pass along next the end of the pier. They were then fixing, or making, or extending that pier along.

Q. Was that on the east bank or on the sand-bar? A. There was a sand bar on the south side.

Q. Was that angle on the bank of the river, or on the lake shore? A. I think it was near the bank of the river.

Q. How wide was the bar there along the north pier? A. I don't know anything about a bar. I only know that there was sand on the north side of the north pier.

Q. How wide was it from this angle to the lake shore on the north pier? A. My recollection is, that the mark or line between 34 and 35 was nearly or not far from half way to the lake. But the distance was greater from that line to the lake shore than the river. Perhaps it was fifty feet.

Q. How far was it from the angle to the lake shore when you came here, across that sand-bar? A. From three hundred to three hundred and fifty or four hundred feet, I should think. It was about that distance from the steps on the river. I don't know

whether that angle was at that point, but I think the angle was made not far from that. My recollection is, that the angle was made not far from where the lower timbers stuck out. My recollection is that they were at work there, but I didn't know anything about the angle until a few days ago.

Q. That is, it was three hundred to four hundred feet across from the river to the lake shore, which included the sand-bar? A. It was very near where I supposed the old river was, or had the appearance of turning that these steps in the pier were, and I think it was about that distance to the water on the side of the pier.

Q. From the angle in the pier, wasn't the sand at least sixty or eighty feet wide inside of the piers west of the angle in the pier? A. I should think not so much as that. My impression is that it was not over thirty or forty feet. When we landed here we came up on a scow, and struck the first land we could land on conveniently, and walked over on the north side to come in.

Q. Wasn't there a bed of sand, the old sand-bar, at least from sixty to one hundred feet wide between the piers, west from the angle for three hundred feet? A. I think there was a bar or something, but it strikes me it was not one hundred feet, or to exceed fifty feet, at the time we landed there. We came from something a little east of this to the stairs in the pier, and then west of that. These steps in the pier were to go up on the pier that was erected in 1834.

Q. Were they not made for that purpose when you came here? A. I supposed not. When the piers terminated the timbers were left back a little. I took it to be for the convenience of aiding in walking up.

Q. Was the pier across that sand-bar in the spring of '35? A. The pier was built as I have described it, when I came here, from near what I supposed to be the old river running east into the lake.

Q. Wasn't there still three hundred feet of the bar in the harbor when you came here? A. I don't think there was so much as that, or any where near it. The piers were run nearly across to what I supposed to be the river, and they were at work down on the pier when I came here, I think they were at work at the time we landed on the pier. I recollect of scrambling over some work.

Q. Do you mean to say that at the time you came here, the pier was on the sand-bar, and that it was all under water between the two piers? A. No, sir, I do not. I don't mean to say so.

Q. You say the piers were across the sand-bar? A. I never have said so, or I have no recollection of saying so. I knew nothing about a sand-bar, except a sand-bar on the south side of the pier. And this little bit of sand-bar near the west end of the pier, that seemed to have been extended into the river. There was a little bar running out into the river that we landed on be-

tween the two piers. My recollection is that it extended west of the end of the pier more than thirty or forty feet at the time we landed. There was water between the piers.

Q. How wide was it across to the south pier? A. The same distance it is now, two hundred feet. I think the water was visible between the two piers, with the exception of this bar near the west end of the north pier. There was a bar run into the river. I think that that bar was some thirty, or forty, or fifty feet perhaps west of this point, and then there was a bar. It seems to me that there was sand, and what appeared to me to be originally dirt that had washed down still west of that, making a bar, that was afterwards taken out.

Q. Do you know where Kinzie's warehouse was? A. Yes, sir.

Q. How far was the angle of the pier from that warehouse when you came here? A. From Kinzie's warehouse to where the pier had that appearance, I couldn't give any judgdment of the distance. It would be merely guess work.

Q. Guess at it, you have been guessing at the accretion? A. I have not been guessing at the accretion; if I was so understood, I wish to correct it.

Q. Then you swore positively as to the accretion? A. I have not sworn positively as to the accretion. I can go over my evidence but I don't wish to have it put into my mouth. I mean that I have nothing but my general idea of how far it was, and that is very indistinct, in reference to the distance from Kinzie's warehouse to the angle or east bank as I supposed of the river, where it turned around, I would have to guess.

Q. Give us one idea of that distance? A. I suppose it was two or three hundred feet—I should think more than that, rather than less.

Q. How far from that point to where you saw the accretions? A. It was further than that. It would be some six or seven hundred feet from Kinzie's warehouse to the lake shore—rather more than less, that is, as it looked to me at the time.

Q. Does that include the accretions? A. From my recollection of the shore, and the distance to go, it strikes me it was further than that. I can't give any distinct idea of how much farther it was—some two or three hundred feet farther.

Q. Then the whole distance would be seven hundred feet? A. My recollection is not distinct at all in reference to the distance between the end of the pier, or what was the shore at that time, and Kinzie's warehouse. I have so little recollection as to the distance, that I cannot state it with any sort of reliability.

Q. Is your recollection very good as to the sand-bar between the piers when you came here? A. No, sir, it is not. I merely recollect that we landed on a pier or a bar that ran out there.

Q. Do you know whether that was a part of the old sand-bar, or

sand that had drifted in? A. I don't know. I only know what I recollect of seeing.

Q. Was the pier built up beyond that this way towards Kinzie's warehouse? A. I think it was being built, or there was a part of it built. They were at work there in '35. I think they were building near this place on the pier. I think I recollect that it was there or somewhere along there. There were timbers out to almost there.

Direct examination resumed by Mr. Van Arman.

Q. In reference to that angle which was shown you at the last trial when the pile was taken up, did you ever notice that angle before that time? A. No, sir, not before about that time. I think I had not noticed or heard of that angle before that when we went down there looking at the pile.

Q. Up to that time it had escaped your notice? A. Yes, sir.

Q. Is that the angle you report as being three hundred feet west of where you supposed the old shore to be? A. That is where I supposed the angle was. I supposed the angle was at that point.

Q. Did you ever notice any angle in the north pier until the trial? A. No, sir.

Q. What led you to suppose that the angle was at the turn of the river, or near the river? A. The fact that when I came up here there was a termination of the pier there. There was a termination of the pier near the east side of the river, some little distance from the river, as it curved down. When I saw that angle, from the fact that I had seen this termination where it appeared to be left for the purpose of building on to it, I judged that was the point of the angles.

Q. You say you had never noticed any angle? A. No, sir, I had no means of knowing the angle was at that point, only supposing it would have been built there.

Q. You had never noticed the angle in the pier until the last trial, and then you thought the angle was at that point, because you noticed that they extended the pier up that way, and you judged they left off at that place. A. Yes, I judged it was near the shore of the river, or a little east.

Q. Did you estimate the accretion formed there with any reference to any angle in the pier? A. No, sir, I had no reference to any angle in the pier. I don't know anything about that. I made that in reference to the marks on the pier—particularly in reference to the marks on the pier at the east line of 35.

Q. If it should turn out that you were entirely mistaken as to whether that angle was at the east shore of the river or not, would it effect your estimate of the accretion? A. No, sir, I don't know anything about where that is.

Q. You say you put some marks on the pier on your arrival? A. Yes.

Q. Can you recollect what state of progress the pier was in

when you arrived here? A. We arrived the last of May. They had then finished a portion of it and covered it over with narrow pieces that we could walk on, but near the west end it was open and unfinished and along opposite these lots, 34 and 35, it was open and unfinished.

Q. How high up was it? Was it as high as it was made afterwards? A. I don't recollect whether any timbers were put on afterwards, but my impression is, at least along where I made the marks, during the summer of '35, the pier was finished east of the east line of 35, or about there. It was finished when I made the marks, and west of that it was open, and you could see down in there, but whether there were timbers afterwards put on the top, or how long afterwards, I couldn't tell, because they were at work all along there.

Q. Do you locate anything in reference to that pile that was spoken of? A. In my evidence I had no reference to that pile.

Q. Had you ever noticed that particular pile prior to that time? A. No, sir.

Q. Could you tell what relation that bore to the old shore? A. It certainly was a great ways west of the shore, as I saw it when I came here.

Q. You didn't see that pile to notice it when you came here more than any other pile? A. No, sir, I only noticed generally that there were piles driven along there or standing in the pier.

Q. Did you notice whether that pile was in the water or sand or not? A. My impression is, that the piles at that end were in the sand, and those further along were not so deep. There was sand and some rock for quite a little distance, and I should think about the location of that pile, as we went east the pier was deeper, and the piles stood out further.

Q. Can you testify, that at the time you came here, that pier which you took up was on land or water? A. I could not with any certainty. I only give my recollection that that pile, and those along in that vicinity were not so far out of the ground; that they were in the sand and no water around them. After we got a little further it was deeper, and still further along the pier was filled up with rock and sand.

Q. At the time you came here had some of the cribs that stood on land, water in them? A. Some of them that had land on the north side had water inside in the cribs, particularly when the water was high, and the waves would roll up and roll over the rocks inside of them.

Second cross-examination by Judge Morris.

Q. You told me that you knew that pile was deep in the ground because there was water there when you came here? A. I don't wish to be understood as saying so. I said then the pile would be found longer, and I gave my reasons to them as I intend to give them to the jury here. I said that it was because I noticed

these piles along there were most of them out of the ground a great distance, and some of them had water in them, and some I think sand, and my way of accounting for that fact was, that they were actually only driven a little ways into the ground, and I showed them the tops of the piles to show that they were not abraded or split badly.

Q. Didn't you say there was water immediately south of that between the two piers? A. I don't wish to be understood as saying that I recollect that there was water, or rather I did not. I think, from my recollection of that little bar, washed out and dug away, that it was not far from where there was land. It was shallow.

Q. Wasn't that land a portion of the sand-bar? A. I don't know. It was sand; there was sand north of it, and sand south of it, that is, where there was sand south, there was sand north of the pier also at the same point.

Q. Were they about equal? A. I don't know.

Q. You say where there was sand north, there was sand south? A. I didn't say that, Judge. When you asked me whether I knew that was the sand-bar, the only way I have of giving my opinion is, I supposed it was a part of the original sand-bar, because there was sand north of it, and where there was sand south there was sand north. There was a great deal more sand north, and it extended a great deal farther than that on the south side.

Q. You didn't estimate the accretions until after you came here? A. I don't know anything about the accretion before. I only estimate the accretion I saw. When I came here I found the east line of 35 didn't touch the lake; that there was sand about one hundred and forty or one hundred and fifty feet, or over two lots more out beyond 35, eastward. I think I marked off the lots beyond 35, and had some to spare, about that time, and had done so when my father came here.

Q. Did you mark the pier where the water was when you came here? A. I think I didn't when we first came here. I think it was about a month after I came here, before I made the marks to identify the accretions.

Q. How much was it in October, '35? A. I think it was over five or six lots. It was five lots outside of 35—five or six lots outside of 35. I recollect that I counted six lots that it had made when I went away to Detroit, in the fall of '35, after the close of navigation. It must have been after the first of November, I should think.

Mr. Van Arman.—You say you gave as a reason to the men there why you thought that pile was deeper and longer; that when you first came here it had stuck up a good ways out of the earth, and when you found it, it didn't stick up but a very little ways? A. Yes, but I didn't have any reference to this particular pile, but to those piles there generally.

J. K. BOTSFORD, called by the defendants, being duly sworn was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. The 15th August, 1833.

Q. Have you been here ever since? A. Yes.

Q. Did you know Capt. Allen and the Government employees then? A. I did.

Q. Had you occasion to be down on the piers? A. I occasionally went down there.

Q. Do you recollect when the north pier was begun? A. Yes, sir, I do; I recollect the fact.

Q. Did you observe any change of the land north of the pier after it was begun? A. Yes, sir, it filled in with sand very rapidly after the north pier was put out. I think almost every one that went down couldn't help but see that the sand was filling in very fast on the north side.

Q. Did you observe the sand about the pier during the fall of '34? A. Well, sir, I think in '34 and '35 it filled in very fast, indeed.

Q. Do you recollect the weather in '34–5? A. I could not say anything very remarkable about the weather; I had nothing to impress it upon my mind very sensibly.

Q. What amount of land do you think had gained or made there from your observation within a year from the beginning of the north pier? A. I should think it had filled at least half the length of the pier, perhaps more; I know it filled in very rapidly. I know I have been astonished many a time to go down there and see how it was filling up.

Q. From what point on the pier do you estimate that increase? A. From the point where the pier was commenced. I should have to take the starting point from the place where the pier was commenced—the point where the pier was started from the land to the water. I think they commenced where the sand bar was and went into the lake in the first place, and afterwards, I think, there was a very heavy storm, and it broke around the west end of the pier as it first started; then they commenced and filled up.

Q. Wasn't there an extension of the pier westward? A. Yes, sir, to fill up this place.

Cross-Examined by Judge Morris.

Q. Where was that spot where they commenced? A. I couldn't locate it in any other way than as where the sand-bar commenced. I think, probably, the north pier ran into the sand-bar fifty or sixty feet, perhaps more, where they made the commencement of the pier. I should think fifty or sixty feet. It was to have a foundation on there.

Q. Then in the fall there was a storm? A. I don't know whether it was in the fall or what time. I don't know any more than it broke around. I didn't have much business down at the pier. I

don't know when that was. It must have been sometime during the course of the construction.

Q. Was it in '34, '5 or '6? A. I couldn't say, because my mind is not fresh on that. I know I have a recollection that the storm was such a one; I think it filled up the river on the north side, so that the channel ran on the south side close to the south pier.

Q. Didn't it break around there some twenty feet wide and four or five feet deep? A. I shouldn't think it was so deep. I think they filled it up with sand.

Q. Didn't it make a deep gully there so that they had to throw timbers across and to level up the pier? A. I think so.

Q. How deep was it? A. I don't know; I didn't measure it. I merely know that there was a bridge to go on over to the north pier.

Q. You didn't measure the accretion on the north side? A. No, sir, I just give my opinion.

Q. Couldn't you give your opinion as to the depth of the gully? A. It might have been five or six feet.

Q. Do you know of an angle in the north pier? A. No, sir, I never took notice of any.

Q. Did they drive any piles in those cribs on the sand-bar? A. I don't know. I don't think they did.

Q. Did they in the lake? A. Yes, sir, I think in order to fasten the cribs they drove piles.

Q. Did you see them driving? A. Yes, sir, but don't know whether they were outside or inside. Of course they must have been in the lake, because there was water there. I think where they commenced building the pier it was on this sand-bar and they filled that in with stone to the top, from that place on the sand-bar where they began.

Q. In the lake they covered it over? A. Yes, and put in piles and covered it up with stone.

Q. How for was the pier run out in '34? A. It was quite a distance. I never measured it,—perhaps six hundred or seven hundred feet.

Q. How far was it in '35? A. Well, I must say that I don't know; they kept running it out continually, adding to it. They were constantly at work extending it.

Q. Did they extend it in '35? A. I think they did.

Q. How much did they make? A. I don't know.

Q. Was it cloudy or pleasant weather in 1835? A. I don't know. I didn't keep any diary of the weather in 1835.

Q. Can you tell how much that made on the pier in '35? A. No, sir, they were constantly at work on it when there was no storm.

Q. Do you know where they commenced working on the sand-

bar, westward, toward the Kinzie House? A. I don't know as I could tell you; that has passed out of my mind.

Q. You know that there were accretions, but how much in '34 and '35 you don't know at all? A. I know there were accretions. I don't pretend to say I know how much; I merely judge of them.

Q. Can you say there was fifty feet in '34? A. I have said once I thought there was at least half the length of the pier. I may be mistaken. I merely used to go down occasionally, Judge. I was not at work on the pier. I paid very little attention to it.

Q. You can't pretend now to say, with any certainty, as to how much it was? A. No, I can't pretend to say. I say considerable. When I say there was considerable, I don't mean to guess, but that implies a good deal.

Q. Fifty feet is a good deal and a considerable? A. No, sir, you'll scarcely notice fifty feet.

Q. Were these lots considered valuable? A. No, sir, I don't think they were considered very valuable.

Q. Then you didn't take notice of a fifty feet lot? A. No, sir, I understood, however, that Mr. Jones had bought that lot to get the outside.

Q. Who from? A. I couldn't say; perhaps Sam Jackson; he was Mr. Jones' particular friend.

Q. Wasn't Sam. Jackson a great blabber? A. A good deal, sir.

Q. Was he telling you that bragging of Mr. Jones? A. Well, Mr. Jones had seen how it worked down in Buffalo, and he was a notion of taking hold here and getting a good thing out of it.

Q. Can you state the amount of land in '34, or '35, or '36? A. If I could give you the number of feet I would.

Q. In what length of time was it filling in half way? A. Perhaps a year and a half.

Q. If it took a year and a half to fill in half way, how much time would it take to fill in the balance? A. I presume it would have extended to this time, if they had extended the piers.

Q. Is it out to the end of the pier? A. can't say how it is now.

Q. Are you not as much interested now as then? A. No, sir, I don't pay the same attention now that I did then.

Q. Is it a mere matter of opinion, from recollection twenty-five years ago? A. Yes, sir.

Q. And you may be mistaken? A. I wouldn't be very much m staken that one-half would be filled in.

Q. Did you know more about it then than now? A. I think I would have noticed more then than now.

Q. How much was there in in August, 1834? A. I don't know. All that I know about it is from a remark I made at the time when I visited the pier. I noticed that the sand would come in.

Q. Was it ten feet August 1st, '34? A. I don't know.

Q. Are you satisfied it was ten, twenty, thirty, or forty feet,

August 1st, 1834? A. [After a pause]—I think it began to deposit as soon and as fast as they made the pier. I can't tell about the number of feet.

Q. Put it at the lowest mark, or at the highest, at which you would estimate it at that time? A. Well, sir, it is some time now for me to remember whether it was this or that number of feet.

Q. How can the jurors tell if you can't tell them, and they are to judge from your testimony and that of others? A. I don't believe they can tell an impossibility, nor I either. I don't pretend to.

Direct examination resumed by Mr. Fuller.

Q. Was there any accretion within a year? A. I say that for the first year, or year and a half, it increased at least one-half the length of the pier.

Q. After this storm, when it broke through there, didn't the land appear to remain dry after the storm had passed? Was the land dry between it and the lake? A. Yes, I think it was.

Q. How was that breach stopped? A. I think it was stopped by sinking more cribs and piles.

Q. Are you able to state what year that was? A. No, sir, I know it was early.

Q. Was it '34 or '35? A. I have no means of knowing.

Q. If you have no means recollection, say so? A. I have none I have not had my mind called to this matter, and it is about twenty-five or twenty six years ago.

Q. You knew Judge Morris here then?

JAMES H. WOODWORTH, called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In July, 1833.

Q. Have you been here ever since? A. Most of the time I have, sir. I was absent two years, '40 and '41, and part of '42.

Q. Did you know Captain Allen and his assistants? A. Yes.

Q. Did you observe the improvements in the harbor? A. I did, sir.

Q. Do you recollect the year of the construction of that north pier? A. In 1834, I believe it was.

Q. Do you know how much was built that year? A. I can't say postive. I wouldn't undertake to say anything about that.

Q. Was your attention directed to the making of land north of the pier? A. Yes, sir, in '35. I think it was a part of the fall of '35, that I was down on the pier and on the ground or shore of the lake, noticing the accretion. Some parties were with me whom I don't recollect now. I recollect the question arose, who that accretion would belong to. We noticed an accretion. I wouldn't undertake to say how much—from one hundred to three hundred feet, perhaps. It was a triangular shape.

Q. Which side do you estimate at three hundred feet? A. The side along the pier or near the pier.

Q. In what direction did it extend? A. I should think at an angle that would make the other side of the triangle, extending north, twice as long as that on the pier.

Q. Wouldn't the line drawn from the farther extremity of the pier, to where it struck the land, extend northwest from the pier? A. Yes, sir, it would strike the land, making the west leg of the triangle twice as long as the other one.

Cross-examined by Judge Morris.

Q. You say that accretion was probably from one hundred to three hundred feet? That is a mere matter of opinion at present contrasting the circumstances that occurred at that time in your own mind? A. Yes, I don't think there was less. I have taken a pretty wide range. I don't think there was less than one hundred feet or to exceed three hundred feet from the original lake shore.

Q. Where the first crib was put down? A. I don't know about the cribs. I ranged through, from the shore below and above, to ascertain the original water line.

Q. That is, you measured by the old sand-bar south of the south pier? A. Probably I did. I ranged through, from the original land marks as they appeared then.

Q. You knew Capt. Allen? A. Yes, Lieut. Allen.

Q. Was he a correct business man? A Yes, sir, we thought him so.

Q. If he had kept a record of how much the accretions were each year, and of the depth of water outside of these accretions, would you rely upon that as being better than your memory? A. Yes, sir, I should. I have confidence in the man to keep a correct record, and I have no doubt he would from what I knew of the man.

JOHN C. RUE called by the defendants, being duly sworn, was examined in chief by Mr. Fuller, and testified as follows:

Q. When did you come to Chicago? A. In 1834.

Q. What was your business then? A. Carpenter and joiner.

Q. Did you work on the piers? A. Not at that time. I worked on the piers in 1837.

Q. Were you on and about the north pier in '34 and '35? A. Yes, sir.

Q. Did you know Lieut. Allen and his assistants there? A. Yes, sir.

Q. How often were you there? A. I was down there quite often—sometimes once a week, sometimes but once in two weeks. I was working on the north side, helping to build a building for Robert Kinzie, that stands right north of the Lake House. The

shop I worked in stood somewhere near where the Lake House stands.

Judge Morris.—The Butterfield House? A. I worked there from October until April.

Q. Did you observe any change in the lake shore after the north pier was begun? A. Yes; I guess I didn't observe it much until the spring of '35. I was down in the fall. I was on the pier perhaps ten days after I arrived in town. I was there often afterwards while it progressed.

Q. How did it change in the spring of '35? A. I observed that the sand washed in on the north side very fast along the pier, filling up as the pier progressed.

Q. Did you observe it in the summer and fall of '35? A. Yes, they were working at the north pier in the summer and fall extending it out into the lake. I noticed it as I went down there from time to time.

Q. How far did that get out by the fall of '35? A. I think it was some eight hundred or nine hundred feet, perhaps more.

Q. During that summer did the land continue to make on to the north pier? A. Yes, it continued to make, and made rapidly. The new made land laid right up against the pier, and when I observed the lake shore, it came in with a good deal of a bow, and as the sand kept washing in, the bow kept decreasing gradually as it went out and extending northerly along the lake shore.

Q. In '34 did this beach of sand here lie lower than the piers somewhat, so that the piles stuck out? A. Yes, sir.

Q. Was any portion planked over in '35? A. I could not say. It is my impression that there was not, but there may have been late in the fall of '35. There was planking in '36.

Q. How much do you think there was that made that season of '35 down to the fall? A. Well, sir, two hundred to three hundred feet—perhaps four hundred feet from where I discovered the commencement of the north pier, when I arrived here. I concluded that that was the commencement. The pier was timbered up there, as there were four or five steps to go up on the pier when I first saw it.

Cross-examined by Judge Morris.

Q. When did you come here? A. I arrived here the last day of September, or the first day of October, '34.

Q. Were you down on the north pier soon after? A. Yes.

Q. Was there any accretion there then? A. I couldn't say.

Q. Did the lake shore then come in very near the commencement of the pier? A. It might have been fifty feet from the end. I didn't observe that point in particular, only I observed the lake shore.

Q. Didn't the water wash around there after you came here? A. Yes, sir, it washed around in a storm.

Q. In '35? A. I am not able to say whether it was in '34 or' 35, that the water came around and made a channel from the lake.

Q. Didn't it wash around in '36? A. Not that I know of.

Q. 37? A. No, sir, I am very sure it didn't run around in '37, because the sand was as high as the pier.

Q. Some witnesses say it went around in '38? A. It might. I did not know of it, and I never saw it.

Q. You don't believe it? A. No, sir, I hardly believe it, because I was working on the sand that same time in the fall of '37 right near the pier, hewing timber to be used for the south pier, and I know there was a long tract there then, and a great deal of timber piled upon it.

Q. When was the pier built across the bar west from the lake shore? A. The pier was commenced before I came here.

Q. What portion was done? A. There might have been four hundred feet when I came here, into the lake, starting from the lake shore and running east or north of east.

Q. But when was that built from the lake shore this way toward's Kinzie's warehouse across the sand-bar? A. I think it was '36.

Q. Didn't you help to put it in, in '36 and '37? A. No, sir, my work was on the south pier.

Q. Was that pier on the south side built up this way there? A. Yes, sir, some portion of it was up the year before in '36. I am pretty certain that it was put in before I worked down there.

Q. It was built in '35? A. No, sir.

Q. You are pretty certain of this? A. Yes, sir.

Q. Were you acquainted with Mr. Allen? A. I was somewhat acquainted with him.

Q. What kind of a man was he? A. He required things to be done very neatly and exactly. Mr. Nichols was the man who had the most to do with the men.

Q. Didn't he require them to be very particular? A. Yes, sir, he did.

Q. Did you see him surveying the harbor, taking soundings, &c.? A. I saw him having his instruments out there.

Q. The piers had been located before? A. Yes.

Q. Was he around in the lake in a little yawl? A. I have seen him in the lake in a yawl.

Q. With his instruments? A. Yes.

Q. If he should give the depth of water, and the dates, and the quantity of sand accumulating, would you rely upon his statement as better than your memory? A. Yes, sir, I would.

Q. How much do you say by November 1st, '35? A. I wouldn't say.

Q. Could you come within one hundred feet? A. Yes, sir, I think I could.

Q. From the point where the water on the lake shore struck the pier, how much had it increased in November, '35? A. From two hundred to three hundred feet.

Q. Do you think you might be mistaken one hundred feet? A. No, sir.

Q. Have you ever been mistaken about distances? A. Well short distances I can locate pretty accurately.

Q. Is two hundred or three hundred feet a short distance? A. Yes, sir.

Q. Have you ever been back to the country you came from since you come here? A. No, sir, I have never been absent from Chicago more than four weeks, except at one time since I arrived here. I have been in Chicago all of the time.

Q. If Lieut. Allen should say it was not one hundred feet by November, would you believe him in preference to your own recollection? A. I would say that was a mistake, because I was often down on the pier. I went down there, for in that early day there were not many other places to go to.

Q. You would still rely on your recollection as better than his record? A. I would in that respect. If his record said it hadn't more than one hundred feet, I should say he was mistaken.

Q. That would be a difference between you and the record? A. Yes.

Mr. Fuller—Did you ever observe Judge Morris down there? A. Yes.

Judge Morris—How old were you when you came here? A. Past twenty-seven years.

Q. And you are still growing older? A. Yes, sir.

Mr. Fuller desired to know if Lieut. Allen's maps of 1836, were in evidence.

Mr. Wills—We consider every thing in evidence that has been referred to by the witnesses.

Judge Higgins offered in evidence a copy of the Recorded Plat which was admitted by Judge Morris, without further proof.

Mr. Lincoln (to meet one count in the declaration), desired to have it understood and stipulated among counsel, that the defendants neither claim title, nor have possession of any thing within the original lines of lot 34. Agreed to.

Mr. Fuller stated that the defendants claimed title to lot 36, or the fraction east of lot 35.

Judge Morris—We don't claim that ourselves; but we don't admit that you have the title. We claim that it belongs to the city of Chicago.

Mr. Wills said the plaintiffs would object to any testimony in reference to the fraction alluded to east of lot 35 as irrelevant.

Mr. Fuller stated that he desired to offer some title papers which were not then in Court.

Judge Morris—You can offer them on Monday, if you want to.

Mr. Fuller announced that the testimony of the defendants was closed.

Court took a recess of twenty minutes.

PLAINTIFF'S REBUTTING EVIDENCE.

ASA F. BRADLEY, recalled by the plaintiff, was further examined by Judge Morris, and testified as follows:

Q. You said you made a survey in '47; at the time you made that survey, did you make any notch in the pier, where you struck the pier? A. I cannot state whether I made the notch, or the man who was with me. There was a notch made, to designate the line between '34 and '35, at the pier.

Q. There was none before? A. No, sir, I didn't see any. I have no recollection of seeing any at all there. I made a notch there for the satisfaction of the parties for whom I made the survey, to show where it struck the pier.

Q. If there had been one there, would you have made another? A. If mine had disagreed with it I should have made another; if it hadn't disagreed with it, I presume I should not have made another.

Q. What year was that? A. It was sometime in the summer of '47.

Q. Where did you make the notch on the pier? A. I think on the top timber—or the top but one. I don't recollect which. or whether it was both. It was a sufficient notch to be plainly visible.

Q. What line was that you made it on? A. The dividing line between lots 34 and 35.

Q. Had you surveyed down there before? A. I had surveyed very frequently on Kinzie's Addition.

Q. But on these water-lots? A. Yes, sir, I think that was the first survey I made down there on that line. I don't recollect that I have made any since—possibly I have.

Q. Did you prior to that time? A. I don't recollect.

Q. Was that the first? A. I believe it was the first.

Cross examined by Mr. Lincoln.

Q. Wheu you run the line between 34 and 35, was there a fence upon it, or nearly upon it? A. I can't remember distinctly whether there was or not. I recollect a fence being there, and my attention being called to it, but whether then or subsequently, I can't say.

Q. Do you remember whether there was a cedar post of some sort upon the pier, either where the line struck the pier or near that? A. I have some recollection about a cedar post, but whether it was there at that time, or at some subsequent time, I am not sure. My attention was called to it a very long time ago,

previous to one of the trials. A long time as elapsed since, and I can't distinguish the lines.

Q. Was it pretty near that line that you fixed? A. Yes. It was where I fixed that line, but whether then or at a subsequent period I can't say. I made that survey in '47.

Direct examination resumed by Judge Morris.

Q. You don't recollect the fence? A. I recollect about a fence, but I can't say whether it was there in '47, or at a subsequent period.

Q. If the fence was there, there was no need of surveying? A. I can't tell what the survey was for. It might be for verifying the fence.

Q. If this post was right opposite the notches, was it not put there subsequently? A. I don't know.

Q. Was it not a part of the fence that you saw? A. It might have been a part of the fence.

Q. You made several surveys there? A. I might, but whether I did or not, I can't say for certain.

Second cross-examination by Mr. Lincoln.

Q. At whose instance did you make the survey in '47? A. At Mr. Johnston's, the plaintiff, or Mr. Rees', I don't know which.

Q. It was on behalf of Mr. Johnston? A. Yes, sir.

Q. Is it not a very common thing in surveying for people to get a line run where there has been a fence, to ascertain whether it is exactly right or not? A. It is a very common thing.

Judge Morris.—But if it is found right, you don't make any notches or alterations? A. That would be according as the parties requested. If they requested me to put monuments I should do it.

Judge Morris.—If there were monuments, you wouldn't add another? A. No, sir.

Mr. Lincoln.—Don't you often put down a more permanent monument than a wood fence? A. Yes, sir, stone or cedar stick

THEOPHILUS S. GREENWOOD, called by the plaintiff, being duly sworn, was examined in chief by Judge Morris, and testified as follows:

Q. When did you come to Chicago? A. In July, 1835.

Q. State what you engaged in soon after you came here? A. I was in Gurdon S. Hubbard's office as clerk.

Q. [Presenting a document]—Look at this deed and see whose handwriting it is? A. It is my handwriting. [Deed from Rob't. A. Kinzie to Wm. S. Johnston, see page 2.]

Q. You made out that deed? A. Yes, sir.

Q. Were you present when the contract was made? A. I can't say I was; I think—

Q. There are three water lots in it? A. Oh, yes.

Q. State what was said, if anything, about there being a water

line on this lot, north of the pier, at that time, and whether it was examined by yourself, the plaintiff here, and Mr. Hubbard?

Objected to as not rebutting testimony.

The Court, after discussion, stated that any evidence tending to show possession would be allowed.

Q. Where do you live? A. Freeport.

Q. State if you knew where this lot was, and who was in possession of that lot when you came here, and up to the time this sale took place? A. I understood—

Q. What do you know about it? A. Mr. Hubbard had a bond for a deed from Mr. Robert Kinzie, of this property, and there was a provision in it that whenever he sold this lot, which was among other lots—whenever he made a sale of these lots, he was to have it deeded direct from Robert Kinzie to whoever bought it.

Q. Had Mr. Hubbard any possession of this property; or did he go down with you or Mr. Johnston to look at the property? A. About the month of October, Mr. Johnston bought the lot—three lots, in fact, two of them lay there. He bought them, and we gave a deed of them to him from Robert A. Kinzie and wife, and I went down with Mr. Johnston to look at the lots, or lot 34.

Objected to as not tending to show possession.

Q. Did you go down there as the agent of Mr. Hubbard to show him the property? A. Yes, sir, I went there as the agent of Mr. Hubbard, and acted for him all the time.

Q. Did you go down there to put him in possession of the property? A. I went down with Mr. Johnston to look at the lots he had bought, and I found that lot 34 was partially covered with—

Objected to.

Witness—[proceeding]—partially covered with water. I made the remark to Mr. Johnston, that it was at that time—

Objected to.

Witness, [proceeding]—I considered when I went down with Mr. Johnston, that I went down as the agent of Mr. Hubbard, and acted in that and in every other instance as his agent.

THE COURT—State what you did? A. We looked over the lots, as I supposed, correctly, by the map, and I gave him possession as far as I was agent for Gordon Hubbard, and told him there were his lots to make the best of them, and that there was water enough for him to catch all the fish he wanted.

Objected to.

Q. How often had you been down there? A. I had been there frequently before, but my attention was not called much to the accretions any further than I saw there was accretions generally making out in the lake, and the water was getting shallower and shallower all along, and it would occasionally, in a gale of wind, wash ashore. Even in the fall of '34, late in the fall, it strikes me there was considerable accretion made. In '36 I know there was

a very heavy storm, and it made a passage through the pier—through the commencement of the pier, over the sand bar.

THE COURT—I don't think this gives us any new light upon the subject.

Witness—The accretions that were made before I came here, I know nothing about.

Q. Was there any other person than Mr. Hubbard in possession at the time you went down? A. No, sir.

Q. Were any improvements there on the property? A. There appeared to be some accretions.

Q. But improvements, buildings, or fences? A. No, sir, nothing but sand and water.

Mr. Wills—If there had been anybody holding adverse possession of that property, or anybody but Mr. Hubbard, who had possession of the property, would you, from your knowledge of it, have known the fact? A. Yes, sir, I certainly would.

Judge Morris—Was there any fence to the east of it. A. No, sir.

Mr. Wills—You went down as the agent of Mr. Hubbard to put Mr. Johnston in possession?

Objected to as leading. A. Yes.

Judge Morris inquired if he might prove by the witness where the water line was at the time alluded to.

THE COURT.—I don't think that would be proper rebutting testimony.

After discussion by Counsel without any further decision by the Court, the examination was resumed by Judge Morris.

Q. You had been down there frequently? A. Yes, sir, frequently.

Q. State whether you were so well acquainted with that lot as to deliver possession of it without any mistake at the time? A. I think so, sir.

Q. You have no doubt of that? A. I have no doubt of it myself. I have no doubt I made the correct points and the correct lots. They contended to the contrary at the—

Q. The time you went down there was the time of the execution of the deed? A. I don't know that it was immediately after giving the deed, but it was about that time. Mr. Hubbard was not in the office, and I went down to deliver possession of this ground as Mr. Hubbard's recognized agent. Mr. Hubbard is here.

Cross-examined by Mr. Lincoln.

Q. There are no improvements of any sort on either lot, 34 or 35, or about there. A. No, sir.

Q. When you went down you looked about there awhile with Mr. Johnston, and then you and he both went away? A. Yes.

The plaintiff's counsel proposed to prove where the actual water line east of, or upon water lot 34, was, in reference to the east line

of lot 34, when this delivery spoken of by this witness took place; which the Court refused on the ground that it should have been introduced as evidence-in-chief, not as rebutting, to which ruling plaintiff's counsel excepted.

GORDON S. HUBBARD called by the plaintiff, being duly sworn, was examined-in-chief by Judge Morris, and testified as follows:

Q. State whether you know the boundaries of the lots 34 and 35, on the lake shore in Kinzie's Addition, and when you became acquainted with them and with that lake shore? A. I became particularly acquainted with these lots, sir, in the spring of '34, partially in '33. I have been acquainted with the lake shore about forty one years—since 1818, in the fall.

Q. You had a bond or the conveyance of this lot from Robert A Kinzie? A. Yes, sir; in '35 I bought from Mr. Kinzie his remaining interest in Kinzie's Addition, with the exception of certain lots reserved.

The examination of this witness was here temporarily suspended.

JOHN H. KINZIE, re-called by the plaintiff, was further examined by Mr. Wills, as follows:

Q. Did you make your conveyance of lot 35 to Mr. Jones in pursuance of the previous contract with Mr. McGregor? A. Yes.

Q. [Presenting a document.]—State whether you made any conveyance to Mr. McGregor in pursuance of this note? A. I didn't make it to Mr. McGregor, but to Mr, Jones.

Q. He was assignee of McGregor, and directed it? A. Yes, sir, Mr. Jones came to me and got the deed under that note.

Q. And in pursuance of that contract? A. I had no other contract with him.

GORDON S. HUBRARD re-called, and the examination resumed by Judge Morris.

Q. State the boundaries of that lot, and where the water line was at the time you sold it to Mr. Johnston? A. [Taking Original Map.] It was very near where this map represents it to be. There had been a slight accretion, but not very much.

Q. How much? A. It might be twenty or twenty-five feet. In the water we saw it evidently was beginning to form eastward. Outside, for some distance out, as far as I could perceive, the water showed sand-bars.

Mr. Wills.—Describe that process? A. Well, the operation of a heavy sea or northeast wind threw the sand up, and as it became shallow, the under-tow, carrying it back, it lodged at a distance from the shore. It lodged fifty or one hundred feet in there until it almost reached the surface of the water, and then it began to accumulate on the shore. As soon as the operation of the under-

tow ceased, it began to deposit on the original beach or lake shore; but when the water is deep, as it is now two or three miles from here on our lake coast, the sea comes up with force upon the bank, and the under-tow carries back with it the sand it brought forward, and still leaves a deep channel along shore; but the moment that gets shallower so that the under-tow don't reach the old beach, it is deposited gradually. The surf rolls along, and it is deposited in that pool.

Judge Morris—Has that been a matter of observation with you as to these accretions in question on that shore, and how long have you noticed that fact? A. We noticed that in '35. We began to notice it in the fall of '34, and we noticed it '35 and '36. It became very apparent that that was the process in '36; then it began to form very rapidly. In '35 it did not, but was very slight and gradual, but you could see the shallow water by the eye for some distance cut to the east, and especially could see the large bar forming there. In '36 and '37 it began very rapidly to be filled up from the outer end of that bar.

Q. At the time Robert Kinzie made this conveyance, in October, '35, state whether lot 34 had a water line on the lake shore? A. It had a water line on the lake shore at that time. It did strike the water line in October, '35.

Q. How much of a water-line? A. As near as I can remember, it was about sixty or seventy feet of where the east line struck the lake before it came to the pier; probably fifty or sixty feet; I didn't measure it, but we saw it was forming and had formed considerably on that line before I sold; but the water was there and struck the line.

Q. You say it had a water-line of seventy feet? A. I won't say seventy, but fifty or sixty, or seventy.

Mr. Wills—You say there was a water-front to lot 34? A. Yes.

Q. You stated that there was a difference between the original shore-line and the water-line at that time? A. Yes, I should think the accretion had made along the shore about twenty or thirty feet.

Q. Where did you fix the original water-line? A. I think this old map [original map] represents the shore very correctly as it was when Kinzie's Addition was laid out, in the fall of '33 or spring of '34; I don't recollect the time precisely; but I think that it represents it, so far as I can recollect, very correctly; there was a little piece at the end of '35, a small fraction on the lake shore—a very small fraction indeed—that was not sold; it don't seem to be shown very plainly here; this map is obliterated; but I remember that the line of 35 made a little triangle—a small piece of ground, perhaps eight or ten feet on the north front, and running not more than twenty feet before it struck the lake, making a small front there.

Q. [Presenting Denton's Map] (Ex. E.)—Where, in reference to the angle in the north pier, was the original shore line? A. I couldn't say; I don't know exactly where they laid the angle, but I know they commenced laying the pier or the first crib at the lake shore—the original shore.

Q. There was the angle? A. Yes, if that was the angle, that was it; that was at the shore there; I don't remember of paying particular attention to the angle.

Q. Do you know an angle in the south pier? A. The angle in the south pier was made where the old channel of the river was, if I remember right.

Q. [Pointing on the map.]—Wasn't it the east side of the bar? A. Yes, it was on the east side of the bar, over where the old channel—

Q. But the angle on the east side of the sand-bar, corresponding with the angle in the north pier? [Showing him on the map.]

Judge Higgins objected to the locality's being pointed out by the witness.

Witness—I couldn't tell particularly where that was laid; I know, in the first place, they filled up the river, blocked up the old channel of the river, and then cut through the sand-bar; and there, I think was the first angle; the sand-bar was east of that place. The south angle was farthest west.

Q. Why farthest west? A. Because the lake shore was making towards the west. It was inclined to the west. It was produced by the angle of the shore, a very slight angle.

Q. Were you familiar with the boundaries of lots 34 and 35? A. Yes, sir, I was very familiar with the boundaries of all these water lots in '35, '36, and '37. I had a very considerable interest in these lots and blocks in that addition, purchasing for myself and others, and leading me to examine and survey them frequently for making contemplated improvements in our plan of improving Kinzie's Addition, for instance, in laying out the streets. The owners of Kinzie's Addition made all the streets there, and in consequence of my having a pretty large interest, and having the matter in charge, it led me to make a good many surveys there, and look up the corners and the streets. I was also a land agent, and that, acting for other people, led me there to show those I was purchasing for, their lots, and people I was buying from, took me down to see their boundaries.

Q. Did you get from Robert A. Kinzie possession of lot 34, and all ground east of it to the lake? A. That is my presumption; that is, I presumed the south end of lot 34 was the lake front.

Q. Had you the possession from the west line of 34 to the water? A. Yes, I supposed from my deed.

Q. Having possession then to whom did you give that possession? A. I sold it to Mr. Johnston.

Q. And put him in possession? A. Yes, sir, gave him possession.

Q. And directed Mr. Kinzie to make the conveyance? A. Yes, sir, Mr. Kinzie made the conveyance under a bond to him at my order. The deed was made out in my office by Mr. Greenwood, my book-keeper, and taken to Mr. Kinzie, and he signed it, and it was sent to Mr. Johnston by mail, or else he was here to receive it.

Q. Could you be mistaken as to there being a water front, and as to the extent of the accretion at the time of the sale by you to Mr. Johnston? A. In the extent of the accretion I might be mistaken, to what extent I can't say; I know there was some, but the accretion was slight.

Q. Within what limits will you fix that accretion with confidence? A. I say twenty-five to thirty feet.

Q. Not exceeding that? A. No, sir, I think not.

Q. Have you any doubt as to the boundary of 34, and the fact that the lot had a water front of twenty or thirty feet on the original shore line? A. I have no doubt on that. I have no doubt he had twenty feet of lake front when I sold him the lot.

Q. With what degree of confidence do you know the original boundaries of lot 34, and the fact that the accretions in front of that lot did not exceed twenty or thirty feet? A. I only know the fact from the knowledge that lot 34 bounded on the lake, and having surveyed it personally, and run out the line once with Mr. Alanson Sweet. Previously we ran out the lines of all these lots down to the lake, and I know lot 35 was the last one. The east line of that lot didn't strike the pier at all. It ran twenty or thirty feet, that is 35. Lot 34 had, originally, one hundred and forty or one hundred and fifty feet. The east line of 34 had, originally one hundred and forty feet of front. In '34 when we surveyed it, at the time I bought, the accretion had been very little and I bought it knowing that it fronted on Lake Michigan and had this accretion.

Q. Who was this Sweet? A. Alanson Sweet.

Q. What time was this you spoke of? A. The spring of '35.

Q. Before the sale to Mr. Johnston? A. Yes.

Q. Sweet was with you? A. Yes, we located the Lake House, and in view of locating the Lake House or the Lake House barn, we run down and located most of these lots.

Q. At the time you located these lots with Mr. Sweet, did he say anything to you of having made a previous survey of this lot?

Objected to.

Witness—No, sir.

Q. At the time of that survey with Mr. Sweet, did you become

aware from any fact or circumstance that there had been a previous survey by Mr. Sweet? A. No, sir, I didn't know anything of the kind, not to my knowledge. I don't recollect anything of the kind. I would say on this point, that in making that survey, it was not with the compass at all, but we run the line with map in hand and found the stakes, as was customary in those days, following the streets down to find the corners.

Q. At the time you made the survey of 34, did you make a survey of 35? A. Yes, sir, we couldn't find 34 without 35, because that was the last lot—probably we didn't find the stake. I don't think we did.

Q. At the time you made this survey with Mr. Sweet, you found the east line of lot 34 struck the shore at such a point as to leave it one hundred and thirty or one hundred and forty feet of the lake shore? A. Yes, sir. I saw that in the spring of '35 there was some slight accretions, but originally the line was one hundred and forty or one hundred and fifty feet—it left about one hundred and thirty or one hundred and forty feet before it struck the pier. There was some slight accretion in '35, but still it had a water front when I sold it to Mr. Johnson.

Q. Did you have possession of that lot to the lake shore? A. Yes, sir; I had possession to the lake shore; there was nothing to the contrary.

Q. Did Mr. Jones have possession of any part of the land between the west line of 34 and the lake shore? A. I am not aware that he claimed any possession from the west line of 34 to the lake shore.

Q. Between the water and the west line of 34, was any body claiming adversely to your title? A. No, sir; not to my knowledge.

Q. Did you take Mr. Johnston down on the ground? A. I think I went down with Mr. Johnston once, and perhaps more than once; yes, I did, two or three times. I had other lots down there, and was trying to sell him other lots, and did afterwards sell him some. I think I pointed out to him all these lots.

Q. Did you ever point out lot 34 and its boundaries, and where it would strike the lake? A. I can't say that I pointed out to him on the ground where it would strike the lake; I showed him on the maps, in the office, where it would strike the lake.

Q. And took him down to the lot? A. Yes; I don't think either of us attached any great importance to the lake at that time; I know I didn't.

Q. Can you fix the location of the former bed of the river—[Presenting Greeley Map, No. 1] (Ex. F.)? A. I think that is a pretty fair representation of the bed of the river, except a little marshy ground here, that was wet and covered with water in there.

Q. Do you recollect a circumstance connected with the Kinzie

House, that enables you to fix where the old river was? A. From the Kinzie House, sitting in the piazza, we could stand and look right straight down the river, and see everything; we could see a full mile below, except one little bend down about the Handy House. I think this represents the thing, as it was at that time, very well, sir; this is the sand-bar, east of this.

Q. Did you know Captain Allen? A. I knew him very well, sir.

Q. What was his position and character, as an engineer, for accuracy?

Objected to, and objection sustained.

Cross-examined by Judge Higgins.

Q. You are acquainted with the plaintiff, Mr. Johnston? A. Yes, sir.

Q. Distantly connected with him, are you not? A. Yes, first cousin, sir.

Q. You have been a long time acquainted with him, and very friendly with him? A. We have been very friendly until the last five or six years.

Q. You have testified in this case before? A. Yes, sir, I believe I did.

Q. The amount of accretion was not in controversy when you testified before? A. I don't recollect that it was.

Q. At that time you were trying to find where the old lake shore was before the piers were built? A. I believe so.

Q. Where were you in the year 1834? A. I was here, sir.

Q. The whole of the time? A. Yes.

Q. What year were you in Danville? A. '33.

Q. What time in '33? A. I left Danville in the fall of '33, and came here and made arrangements to move here in the spring of 1834.

Q. While you were at Danville, you had nothing particular to call your attention to the lake shore? A. I had been here before that time.

Q. You were passing backwards and forwards, but had you anything particular to call your attention to it? A. Yes, sir; I knew it for years—from 1818 to 1833.

Q. You were trading around the country? A. Yes, sir, I was trading around the country.

Q. In Danville you held an office—had a place of business? A. Yes, sir, and one here too.

Q. You remained in Danville most of the time? A. I remained in Danville during '32 and '33, most of the time.

Q. Did you have any interest in the sand there, or any part of it, in 1833? A. No, sir.

Q. When did you acquire an interest? A. In '34.

Q. At the date of the bond? A. Before that, sir. I think I bought an interest in Kinzie's Addition in the fall of 1833.

Q. What interest? A. I think I bought these Lake House lots.

Q. You didn't buy anything on the lake shore? A. Yes, sir, I believe I bought 29 and 31 that fall. I bought several lots on the lake shore that fall from John H. Kinzie and some other parties—from Dr. Wolcott some—

Q. What time in '33 did you buy any lots down towards the lake? A. I can't say what time. I won't say positively it was '33; but I bought them very soon after it was surveyed. It was along in September or October of '33, I think, that I bought some lots.

Q. You didn't attach any importance to any lake shore fronts there? A. No, sir, I don't think we did at that time attach any degree of importance to these fronts.

Q. What did you buy these lots for? A. Well, sir, they were called river lots then; they were to have the most—

Objected to. Objection overruled.

Q. You stated that you had possession of lot 34? A. Yes, sir.

Q. What did you have on lot 34? A. Nothing. I supposed I had possession of it, from the fact of having the title to it, and having it there, as we all had possession of lots we owned in those days. There was no adverse title, or inclosure, or notice of any other person claiming, and I supposed it was all clear. I had a bond for a deed, that was all. My bond gave me a deed whenever I called for it.

Q. You stated that you surveyed these lots? A. Yes, I surveyed them in '33; that is, I examined them and went over them in '33, '34 and '35, almost every year.

Q. You surveyed your lots almost every year? A. Yes.

Q. Who was surveyor in either of those years? A. I don't think we had any regular surveyor in '34 and '35 here. Mr. Snow, I think, was the only man who surveyed.

Q. Who surveyed those lots? A. What I mean by surveying was, we took the plats and went down and traced the lines and stakes; and in speaking of surveying, I don't mean to say I took a compass down and run them out, but took the map down, as was customary, going and finding the stakes upon the ground and tracing the lines.

Q. Did you find the stakes on the south corners of these lots? A. Yes, sir.

Q. You recollect that distinctly? A. Yes, sir, we traced the stakes on the south corners—traced them down and back.

Q. You commenced on the south side of North Water street, at the corners of the lots, at the stakes, and traced the lots down to the lake, and there you found stakes on the lake? A. Yes, sir.

Q. How far were these stakes apart on the lake? A. They were fifty feet apart.

Q. How far apart on the north side of the lot? A. They were sixty-six feet apart, I think.

Q. On the north end of the lots? A. I mean the street was sixty-six feet; I beg pardon.

Q. How wide was the lot on the north end? A. Fifty feet on the north end.

Mr. Wills—Sixty feet.

Witness—Sixty feet, sir; I was thinking it was fifty, but it was sixty. There were no stakes at the south end. I thought you were speaking of the streets.

Q. Which end were they on? A. The north end—the street end of the lots.

Q. How did you trace the lots south then? A. We took it only by the map.

Q. Didn't you state before, that there were stakes driven along the shore? A. No, sir; I meant to say the stakes were driven along the streets wherever they fronted.

Q. Didn't you state that they were fifty feet apart? A. Yes.

Q. Mr. Wills corrected you, and then you stated that they were sixty feet? A. Yes, I stated it; I hope the gentleman will understand: I mean the only survey we made of the lots was, we took the plat and went over it; if it was fifty or sixty feet, we found the stakes, and as Kinzie's Addition was almost all fifty feet, I named that.

Q. How much time were you here in 1834? A. I was here in '34, I think, sir, from March until November, all the time; I think I didn't go east that year.

Q. How much time were you in Danville? A. Not an hour.

Q Not in '34? No, sir.

Q. In '35? A. No, sir, nor '36 or '37; I was at Danville in '33. I have made but one visit there since I left Danville; that was in '38.

Q. Where were you in '34 and '35? A. I was here most of the time; I was here most of that year; it is possible I might have gone to New York that summer.

Q. How far was the lake shore east of you, when you surveyed the north end of 34? A. I think about seventy-five feet from the north end of the lot; I think the street ran into the lake about seventy-five feet from the northeast corner of that lot.

Q. You have had occasion to look at the map [original map]? A. Yes, sir, often.

Q. Recently? A. Yes, sir; I have looked at that once within the last six or eight months—once within a few days.

Q. If neither of you attached any importance to the lake front why were you particular about looking at the lake front? A. The fact was, I had to sell these lots very much less because they ran into the lake.

Q. How much less? A. I don't recollect how much the difference was on that lot. I don't remember without looking at my books.

Q. Did you sell Mr. Johnston a large number of lots? A. I would not be positive. I think I sold him about four lots at that time.

Q. Was there a bond for some thirty-five thousand dollars that you assigned to him? A. No, sir.

Q. How much was it? A. I don't know that I ever assigned such a bond to him for thirty-five thousand dollars.

Q. Did you have a bond from Kinzie for thirty-five thousand dollars, conditioned for the conveyance of certain lots? A. Yes, sir, some seventy or eighty lots.

Q. Did you assign that to Mr. Johnston? A. No, sir.

Q. How many did you sell Mr. Johnston? A. I think four lots, if I remember right. I can't say without reference to my books. I have sold Mr. Johnston a good deal of property at different times. I think I sold him 28, 29 and 34, and two lots back from the river in block 19.

Q. Did you assign a bond to him? A. No, sir, I did not assign a bond to him.

Q. In your former examination you stated that you made a survey in 1844? A. I guess that is a mistake.

Q. You think it was '34? A. I didn't make any such statement here before, in any examination, as that. I think that is a mistake. Perhaps the Judges may remember it.

COURT—That is only what he reads from the record of the former trial. It is probably a mis-print.

Q. You stated in your former examination that Sweet was with you, and you were familiar with the stakes, and counted the stakes and found these lots. A. Yes, I say so now.

Q. You stated you could not recollect which lot you began at? A. No, sir, I cannot. I think we began there at the corner of Kinzie's warehouse.

Q. You are well acquainted with that addition? A. Yes, sir.

Q. What was the number of the lot Kinzie's warehouse was on? A. 27, I believe.

Q. Don't you know it was 21? A. Perhaps it was. Allow me to look and I can tell, [taking the original map.] I think it must have been on 20 and 21. It was not 27. I owned 15, 16 and 17; then Mr. Dole had 18 and 19; then Mr. Kinzie had 20 and 21.

Q. Do you know which Mr. Newberry bought? A. No, sir, I don't know. Here was Mr. Dole's warehouse.

Q. You stated, in your former examination, that you traced the lines on both sides of the streets; what did you mean? A. On the south side; there were blocks laid out on the north side. I mean I traced the stakes. There were stakes, and we surveyed by stakes. That was the only way we had to know where our lots were. When we found the corner we knew that, and followed it.

Q. You stated that you began on the north side of North Water street, and paced down there, and judged by the eye; is that correct? A. Yes, sir, we judged by the eye when we found the stakes and the direction by our map.

Q. Do you remember the distance on the lake shore, when you went down there? A. I think it was about three hundred feet from the street.

Q. Commencing on North Water street, on the bank of the lake and following the bank of the lake down, how far was it to the pier as you recollect it? A. Probably three hundred or four hundred feet.

Q. Is that your best recollection? A. Yes, sir. It may have been less than that.

Q. Do you recollect that as well as you do the other distances? A. I can only remember distinctly and particularly my impression of the time, and knowledge of the fact that the line did strike the lake; as to the number of feet of accretion I cannot state, but I know the line did strike the lake.

Q. Your impression was that the north line of the lot was fifty feet? A. Yes, sir, it was just now, not looking at the map; but I see that they were sixty.

Q. Did you state before that the sand banks were not formed until 18,7? A No, sir, I did not.

Q. Did you state that the lake shore was not along the line of 34 at the time you made the survey? A. No, sir. I say that the south end of the lot did strike the lake.

Q. Did you state before that the line of the lake shore was visible? A. Yes.

Q. How far did you say it had formed in the fall of 1835? A. I think it had formed about twenty-five or thirty feet where these lots are.

Q. Did you not state before that there was one hundred feet between that point of 34 of new made accretion? A. I don't think I stated that. I don't think it was so much.

Q. Didn't you then state—"at the time there was one hundred feet of accretion between that point of 34 and the lake?"

Mr. Wills—Which direction?

Witness—North. I suppose between that point and the lake there was that much.

Q. You mean the length of the accretion north and south was only one hundred feet? A. No, sir, I presume I understood it to be from the east line of 35 to the lake; that was one hundred feet, including accretion from the east line of 34 to the lake.

Q. There was one hundred feet of accretion? A. Yes, sir, there was that much, including accretion.

Mr. Wills—From the west line, you mean? A. From the east line. Originally, in 35, there was a full lot—

Mr. Wills—He is thinking of the pier.

Q. What did you mean when you stated on a former trial, when the extent of the accretion was not in controversy, that there was one hundred feet of accretion? A. I don't think I made that statement of one hundred feet of accretion in front of this lot.

Q. Did you not state that there was one hundred feet between that point and the lake, of accretion? A. No, sir, I said there was one hundred feet between that point and the lake, including the accretion, or about that.

Q. Did you state that every gale after 1834 was throwing sand upon the shore—that after the piers were begun, every storm did? A. I didn't state that in 1834 there was much accretion; there was but little accretion. In the fall of the year after the pier was made, after every gale, we could see there was a slight accretion to the shore.

Q. How much would be made after a gale? A. May be a foot or two.

Q. A. great storm would make a foot of accretion? A. Yes, sir, but the accretion was forming beyond there; you could see it forming bars one hundred and fifty or two hundred feet off, beyond the shore; there it commenced to form, and between the shore and this bar there was water; and it was, may be, six or seven inches on this bar; it was clearly visible on a clear day, when the sun shone; you could see the sand distinctly under the water, and every successive gale increased it.

Q. What time do you refer to? A. I think, more particularly, in 1835.

Q. In the autumn of '35 were these bars above the water? A. I don't think they were.

Q. Were you here in '35? A. Yes; they might have been above water in the fall of '35.

Q. You think the formation was out in the lake first, so that it came within six inches of the surface of the water, and the sand lay there? A. Yes, it formed these bars in the first instance.

Q. But I ask for '35? A. Yes, sir, I speak of that.

Q. You say, in '35 the mode of making accretions was by forming bars in the lake, six inches under water, in ridges, and it remained so until the fall of '35? A. I don't think there was any time in the fall of '35, but what that line struck the lake before it came to the pier; that is my impression.

Q. You stated before that there was a slough in here? A. There was a slough just this side of the end of the north pier; there was a slough came down by the Lake House barn, or block eighteen; there was always a slough there.

Q. You stated that there were several acres between that slough and the lake shore? A. Yes, sir, the slough came down to where the end of the pier was.

Q. Did you state that as late as 1835, you could see the original line of the beach? A. Yes, sir.

Q. You mean at that time the accretions had not been so extended but that you saw the shore? A. They were visible for twenty five feet. They were perfectly visible all along the old lake shore.

Q. Did you state that on that shore, a storm would throw up water higher, and with the first gale the shore line began to change after they began the piers? A. No, sir, I think not; I don't recollect.

Q. Do you say: "On that shore a storm would throw the water up higher; with the first gale when the shore line began to change?" A. Yes, sir, I believe so. I say it was increased after the pier was out; it was a very slight increase of sand after a gale.

Q. Did you state, "I have known a gale to blow there three weeks at a time from different quarters, four days at one time in one direction?" A. Yes, sir.

Q. Did you state: "After a storm, the sand was packed on the beach; had twenty loads of sand been taken off, it would have filled up immediately by the storm?" A. Yes, sir.

Q. Did you state, "the sand on the south shore, as soon as the pier was built out, went away, and accumulated on the north?" A. No, sir, I did not, since the pier was extended. I said the sand on the south side, on the sand-bar, began to move off, but that was very gradual, and in doing so it began to wear away on the south side and to make on the north side.

Q. How rapidly did it wear away on the south side? A. Not very rapidly.

Q. What year did it go away? A. In '37, I think—in that great gale in the fall; I know, in '37, people were in log cabins, claiming that sand-bar.

Q. Did you state: "After the pier was run out, up to half a mile north, the face of the shore was changed by every storm?" A. Yes, sir, I remember that, and I think it was so.

Q. Do you remember where the end of the north pier was at the time you surveyed these lots? A. Yes, sir; at the time I surveyed these lots, in '34, the end of the north pier might have been out thirty or forty feet; there were cribs there, sunk beyond that to the surface of the water, with stone in to keep them down.

Q. What was the total length of the pier when you made the survey in '34? A. I can't judge; I can't give you any opinion; it might have been one hundred and fifty feet.

Q. How far was it in '35, at the time of your second survey? A. Well, in '34 I don't think it was so far, but it was one hundred and fifty feet in '35.

Q. You don't think it was one hundred and fifty feet in the fall of '34? A. No, sir.

Q. You must have observed that pier very accurately? A. No, sir; I didn't have occasion to observe it very accurately. All

that I wished particularly, was getting the vessels into the river; I was anxious to get the pier out, and get the vessels into the harbor. Formerly vessels anchored in the lake and we lightered our goods in.

Q. In the fall of '35 what was the entire length of the north pier? A. I don't know.

Q. Give us your best recollection? A. May be three hundred or four hundred feet in the fall of '35.

Q. That is, inland as well as out in the lake? A. No, sir; from the lake shore.

Q. How far inland was it in the fall of '35? A. Probably two hundred, three hundred or four hundred feet inland. The pier would be five hundred or six hundred feet.

Q. Don't you judge by the map, and not by your recollection? A. Yes, sir, I have told you that I can't judge by recollection at this time.

Q. You can't pretend to say how high it was? A. No, sir, not in '34. I know in '34 they didn't get the stringers on until late in the fall, if they did then.

Q. You had to go on to the pier to get to the lake shore? A. No, sir, it was very rarely that we went on the piers at all—it was rarely that I did at all.

Q. Was the pier built when you made the first survey? A. They were building it. I think they had just commenced putting the pier down that spring of '34.

Q. How far had they got? A. I can't tell you how far out.

Q. Have you no recollection how far out the pier was? A. No, sir.

Q. Can you recollect how high the pier was? A. No, sir, I suppose five or six feet above the water.

Q. How far did you go from the end of the pier in making the survey of the south line of that lot? A. I have already said we didn't run the south line at all, but we found the stakes and were guided by our map, and judged by the eye, and we knew they would strike the lake at such a distance.

Q. You never paced them off to the south end? A. No, sir, except this particular lot. We paced it to see how much front there was.

Q. What was the reason of ascertaining that? A. I don't know the reason, only to see how much front of dry ground we had on that line, and how long before we came to the water. I can't say what was our object now.

Q. How far was it to the pier from this point, where you went down to the water? A. It might been one hundred to one hundred and thirty feet.

Q. Was that the first time you surveyed it? A. I won't say it was the first or second time.

Q. What time was it one hundred and thirty feet? A. When

we first went down my first survey was to see whether these lines were correct. We generally paced these surveys to see if we had the number of feet.

Q. Did you pace these lots? A. No, sir, we didn't pace them.

Q. Neither of them? A. No, sir, I judged by the eye.

Q. Going south did you pace them? A. No, sir, I don't think we did.

Q. You judged by the eye taking the map in hand? A. Yes, sir, there was no occasion for pacing having the map and looking. I think we did pace here down to the lake shore on the east line of 34, to see the distance to the lake shore, to see how much depth of the lot we had

Q. When was that? A. In '35.

Q. Was the pier built? A. Yes.

Q. How far was it from the pier, that you made the measurement then? A. It might have been thirty or sixty feet of the water there then.

Q. That is between you and the pier? A. No, sir, I mean from where the line struck the lake to the pier—the east line leaving thirty to forty feet water front, on 34.

Q. How did you get the boundary to start from? A. We started, probably, from Kinzie's warehouse and followed the stakes down to these lots.

Q. Did you start on the lake shore to step this off? A. No, sir, we took the line, where we supposed it to be, by the map in our hands, and walked down to the lake shore in that direction.

Q. Were there stakes standing at the northeast corner of 35, at that time? A. I can't answer whether there was or not.

Q. Did you measure from the lake shore and then go back from that to a starting point, and step off down south? A. No, sir, I don't think we did.

Q. How far did you start from the lake shore when you stepped this off? A. I can't say. I can't recollect. I don't pretend to say the distance. How many feet or inches I don't pretend to give. I only say that at the time I sold to Mr. Johnston, the lake shore did strike the line of 34.

Court adjourned until half-past nine o'clock to-morrow morning.

Ninth day—Monday, April 2d, 1860.

Court met at nine o'clock. The jury being called, the trial proceeded.

Mr. Fuller stated that Mr. Philip Dean, a witness previously examined, [see page 307, *et seq.*] desired to make an explanation.

Agreed to.

PHILIP DEAN [coming forward] said:—Some one asked me if I

moved away from here in '36. I don't want to be understood so; I have not been away, from 1833 to 1849, except once, and that was five weeks. I don't know what I said; but I don't want to be understood to say that I went away in '36.

Mr. Wills.—You have been reading what you said on a former trial? A. No, sir.

Q. Didn't I call your attention to this book?—[Report of the second trial of Bates *vs.* I. C. R. R. Co.] A. Yes.

Q. You then persisted in your statement that you went away, although you had sworn differently? A. I was gone to Chillicothe five weeks.

Q. But you stated that you went away in '36, and you swore on this former trial that you had remained here from '33 to '49? A. That was a mistake; I didn't intend to say so. I don't believe there has been a month at a time but what the Judge [Morris], has seen me himself.

GURDON S. HUBBARD recalled and direct examination resumed by Mr Wills.

Q You were asked by the counsel about your relationship to Mr. Johnston. State what your relations are at present with Mr. Johnston—whether you are on speaking terms with him, or have been on good terms with him for a number of years?

Objected to. Objection overruled.

A. We are not on friendly terms, or speaking terms, and have not been for four or five years.

Q. You said something about one hundred feet of accretion, on your cross-examination, in your former testimony. Explain what place you meant, in speaking of that—whether on the pier or North Water street? A. I said in my testimony, Saturday, that in surveying and finding the boundary of these water lots, and fixing 34 and 35, we ran down the street. The only way we had, at that time, of ascertaining where the lots were, was to go with plat in hand, following the stakes on North Water street down, finding them by the eye, and finding the corners of these lots. I stated, I think, or intended to state, that from the east line of 34 on the street, where we were surveying on this line, east from that to the lake, it was one hundred and thirty feet on North Water street from the east line of 34 down to the water.

Q. You don't wish to be understood that that applied to the north pier at all? A. No, sir; I don't wish to be understood that the one hundred feet applied to the north pier, because there was lot 35, and that fraction still east of '35. A bit never platted out was included there. That was my remembrance; I may be mistaken as to that; it is a matter of memory alone. My opinion was that there was not more than thirty to sixty feet of accretion there; that is, the new beach formed by the lake.

Q. In the fall of 1835? A. Not in the fall; it increased very

rapidly at the time these vessels went ashore; but in the summer of '35, as I stated before, we could see a bar was forming in the lake two or three hundred feet out. It was shallow there all the time—five or six feet—and in nearer the shore it was deeper, so that vessels would pound over the outer bar and come in there without pounding until they struck again.

Q. You stated that from the original shore line to the water, the accretion was but from twenty-five to thirty feet along the pier? A. Yes, sir, that is my impression, at the time, twenty-five to thirty feet along the pier.

Q. The length of the water front of 34 would be from the point where the east line of the lot would strike the shore to the pier? A. Yes. [The witness here took Denton's map, and passed around among the Jurors and pointing out the localities and talking.] From there I think it was a little over one hundred feet to the the lake in '34, but in '35 there was a slight accretion. I think it was thirty to sixty feet from the end of the pier. This line, by this map, seems to be originally one hundred and thirty feet to the water, consequently the accretion was filling it up there and making the distance less. [Indistinct.] I recollect the bar commenced accumulating in here a little piece along side of the pier. My attention was first drawn to the accumulation by seeing it deposited something in that shape there. [Illustrating.] It formed out in that direction. The bar formed in there.

Q. A number of them? A. I don't know. I know there was one place where it was deeper than in another place.

Mr. Arnold—How much was the water line in '35? A. I stated from thirty to sixty feet from memory. It was in '35 when I sold.

Q. There was a water line then? A. I stated that this lot did strike the lake at the time I made the sale to Mr. Johnston. I am quite positive of that, but as to the number of feet, I am not positive, but I feel quite sure there was a lake shore upon that lot at the time the deed was made, but in the fall, in these tremendous gales, it began to fill up very rapidly, and this bar made its appearance, and soon filled up to the shore.

Q. The lake shore would be, whatever distance it was between where the east line of 34 struck the lake and the pier?

Objected to, as leading.

A. Yes, sir; I thought I had stated that before, that where this line strikes the pier here, the accretions, of course, would fill in here, and make that line shorter as the accretions formed; but in '34 or '35, there was not a very large amount of accretion. This line here was originally one hundred and thirty or one hundred and forty feet from the pier to where it struck the lake; but it was reduced in August to from thirty to sixty feet.

Q. What was the width of that accretion from the original shore line? A. About thirty feet. Here was about thirty to sixty feet

of the east line of lot 34 left. [Witness now returns to the witness stand.]

Q. State whether you are as positive as to the length of the water front on the lake, as you are of the fact that there was a water front on the lake? A. No, sir; I am not positive as to the length; I said I could not be positive; but I feel quite positive that the water front was there; but the exact distance I could not give. I know the accretion had commenced, and there was an accretion, but the distance is more a matter of conjecture than anything else. I became perfectly aware that it was filling up and would become dry land.

Second cross-examination by Judge Higgins.

Q. [Taking the witness around to the jury and illustrating by the map.] Didn't you just swear that the accretion formed on this line and run down in this way? A. I say that the first accretion I saw was a little bank of sand along this pier in this direction, [illustrating,] lying in there where the sand was drifting against the pier. I first noticed that, I think, in the fall of '34, and in the spring of '35.

Q. How wide was it when you first noticed it? A. Very slight indeed—perhaps a foot, or not even a foot wide.

Q. How far, as you make that angle, did it extend? A. Three or four feet.

Q. Then the accretion you saw in the fall of '34, or spring of '35, was about a foot wide and three feet long? A. It might have been more than a foot wide.

Q. How high was it above the water? A. Well, two or three inches.

Q. About a foot wide, three or four feet long, and two or three inches above water, when you first noticed it. You don't know whether it was the fall of '34, or spring of '35? A. No, sir, not particularly.

Q. How far did this pier extend west at that time? A. There was no pier. It was not filled up. They first cut through the bar and filled it up partially, throwing up the sand. In the operation of getting through the bar, they threw the sand up on the land; it was above here, I don't know how high, but this was up here.

Q. How far back was it completed when you noticed the sand one foot wide, three inches high, and three feet long? A. I don't know.

Q. How high was it—was it one, two, four or seven feet? A. I don't know, I think it was not five feet high.

Q. How far did it extend four or five feet high back of this little accretion? A. I don't know that it was four or five feet high; I can't remember distinctly how far it went back.

Q. Haven't you any recollection whether it went back ten feet or one hundred feet? A. I don't recollect, but it strikes me now

it didn't go back to the crib work, but this intervening work was left very low, just up with the sand; I can't pretend to judge how far it was.

Q. How far did this go? A. It went back to the river.

Q. Did it go back to the river at this time?

Judge Higgins objected to Mr. Wills prompting the witness in under tones.

Witness.—The river ran out there. I remember they came through with scows, so that I know the channel was made.

Q. Never mind that, confine yourself to answering my questions. How far back did this pier extend? A. I don't know; I can't recollect anything about it.

Q. You can't tell when you noticed the sand three or four inches high, whether the pier extended back one hundred or ten feet? A. No, sir, I can't remember.

Q. You can't state how high the pier was either? A. No, sir.

Q. Can you tell how far the pier was extended into the lake? A. I don't think I have any recollection on the subject, so as to give a correct answer to your questions; I noticed it was a distance.

Q. You said the accretion commenced in that way? A. I said the first I noticed was a little sand just above the water at the intersection of the pier and the shore.

Q. At the suggestion of counsel, you stated that the line of accretion commenced along in that way, [illustrating by the map]? A. I said in '35 the accretion had evidently commenced, but was not very much—that the accretion was coming gradually down the whole shore. Of course it filled up more of a direct line here, filling in this curve, and of course the shore was straightened by the operation.

Q. How far did this line of accretion extend north? A. I can't say; my observation was, I thought it was filling in more towards this long bar that was forming.

Q. But how far did it extend north on the shore? A. I was going to explain.

Q. Answer my questions directly? A. I don't know.

Q. Did you observe it at any distance north? A. I did some distance, how far I can't tell you.

Q. Have you no recollection on this subject? A. Nothing, but my general recollection. My general recollection is that it formed in from where the shoal water was, outside, not above water, but below water, where was four or five feet of water, and it extended out in this direction; as that space filled up the accretion became more rapid on this shore, until the whole was connected from the shore up here to that pier. I knew that when the "Jefferson" went ashore—

Q. Did you say that this bar extended out two hundred or three hundred feet, and did you state on Saturday that that wa only

six inches below water in '34? A. I don't know. Yes, sir, I think I might, it was perfectly visible in '35. In portions of that bar you could not float a yawl-boat over it without striking it.

Q. Have you talked with either of the counsel since Saturday? A. Yes, sir, I did this morning with one of them.

Q Have you looked at any of the maps? A. No, sir.

Q. Did you look at any reports or any statements? A. No, sir.

Q. He didn't tell you what Capt. Allen, or anybody else said? A. No, sir, he only asked me a question in relation to what I had understood.

Q. You said when it commenced to form, it commenced in this direction; what do you imagine changed it so as to make it run in this direction afterwards [illustrating by the map]? A. I can account for that; I have just said this excavation was made, and the sand was thrown up and left in that situation—a pile of loose sand that that drifted with the wind; the northwest wind drifted it all along here, and you could see it on a windy day, until it struck the shore, and there it was left, and in that way this spot in here was filled up to the bank. That is my idea. At the same time you could see the old beach of gravel; you could see the bank of gravel perfectly plain everywhere. I found that every where there, and you could see the accumulation of sand along there.

Q. You attribute this formation here then to the sand piled up north behind the pier? A. Yes, sir, it came from the shore, and you could see that pile up; I should think it was over two or three feet high.

Q. Did you join the accretion? A. No, sir, not quite.

Q. How far back? A. Probably sixty or seventy feet.

Q. This sand that blew in was sixty or seventy feet west of the accretion? A. Yes.

Q. You say the accretion was two or three inches high, how do you account for this sixty or seventy feet? A. Because the pier had been put in here, and it was elevated. [Illustrating by the map.]

Q. You didn't remember that awhile ago? A. I didn't say how high it had got.

Q. Did it run back to the sand bank? A. Yes, sir.

Q. Then the pier ran back sixty or seventy feet from the accretion? A. I think likely it might; I don't remember. This drift was from this loose sand gradually diminishing as it went towards the shore.

Q. How can you say this accretion was three or four feet long, if this extended back sixty or seventy feet? A. I have said this was formed, in my opinion, from the shore; not from the surf or sea, but from the drift on the shore—the sand drifted and catching against these impediments, and rolling along, and gradually ex-

tended into the lake. We all know, and perhaps you know, that in dry weather a heavy gale of wind will blow sand in your face.

Q. You say that these sand banks were back here sixty or seventy feet, and there was a line drifted along here by the pier two or three feet high, gradually diminishing? A. I won't say but there was a barrier—some kind of a pier against which it was thrown up, whether that was a crib up to its present height I don't recollect.

Q. You recollect that the sand-bank drifted up some three or four feet high, certainly? A. Yes.

Q. That ran down into the water until it was one foot wide and three or four inches high, that you remember certain? A. I don't remember the exact width.

Q. You stated, on the former trial, that "the lake was not there at that time; the line of the lake was visible; we found ground and line; there was a hundred feet between that point of 34 and the lake of accretion." Now where was that hundred feet of accretion? A. Here, sir. [Pointing on the map.]

Q. Did you state, on a former trial, that there was one hundred feet of accretion there outside of 34? A. I don't recollect; I think probably I said something about it.

Q. Was that the fact; you wouldn't be surprised if there was one hundred feet of accretion along here in '35? A. Yes, I have said that already.

Q. Then the date at which you fix fifty or sixty feet was along about the first of August? A. Yes, sir, I say that the water front along that lot instead of being one hundred and thirty to one hundred and forty feet at that time, was, perhaps, from fifty to sixty feet; that is at the south end.

Q. That is the time you talked with Mr. Johnston? A. Yes, sir, later in the fall, in September, or later than September we had a very severe gale, and then the accretion commenced very rapidly and filled it up.

Q. What kind of a day was it when you was down on the shore, was it cloudy or pleasant? A. I don't recollect; when I went down with Mr. Ogden it was pleasant.

Q. Didn't you sell to Mr. Johnston in June? A. Well, sir, I hadn't the deed made then.

Q. Did you make a deed? A. I ordered a deed to be made.

Q. You have said at the time you sold to Mr. Johnston, did you mean that at the time the deed was made, or the time the contract was made? A. I presume it was at the time the contract was made. I don't know, perhaps it was June; it was at the time of my sale to Mr. Johnston.

Q. The deed is October 22nd; then the time you refer to was really in June? A. It may have been.

Q. Is not that the time you alluded to? A. I don't recollect whether he was here in October, when the deed was made out or

not. I know the deed was made out in my office, but whether I mailed it to him or gave it to him, I can't say which; but if Mr. Johnston was here at the time, I delivered it to him. I am satisfied there was a lake front; but if he was here in June, that probably was the time.

Q. Some days the lake was higher than others, when there was a storm, for instance? A. Yes, sir.

Q. It would make it two feet higher sometimes? A. Sometimes it would make it eighteen inches: I think that is the extreme height that has been known.

Q. Does it not frequently rise in less than three days? A. Yes, sir.

Q. Some days you would go down and this sand-bar would be submerged, even the old land? A. Yes, sir; I say generally it is not confined to a gale, but a perfect calm the water will rise ten, or twelve, or fourteen inches and remain so for some days; I have known it to do so in two hours, and it is a pretty strong evidence whenever the water rises in a perfect calm, that we are to have a northeast gale; that generally occurs.

Q. When you spoke of a hundred feet of accretion, you didn't mean it was one hundred feet from this line over here? [pointing] A. In my testimony, on Saturday, I spoke of this point being one hundred and thirty feet from that shore; that included the accretion; the quantity of ground given by this, with the shore deducted from it, would give the accretion; it was not much.

Q. You commenced about one hundred and thirty feet back from the shore and estimated that it was one hundred and thirty feet to the shore with the accretion? A. Yes.

Q. This may show that that point was eighty-four feet from the shore; take that from one hundred and thirty feet, then there was forty odd feet there on this line of North Water street? A. Yes, sir, that would make it; our aim was to get to that shore.

Q. At that time it was one hundred and thirty feet out here, according to your recollection? A. Yes, sir, that is my impression.

Q. That would leave forty-six feet of accretion at the time you speak of; that was when you surveyed that with Mr. Sweet? A. Yes, sir, that is my recollection.

Q. The one hundred feet of accretion, or whatever you fixed it in that former trial, was north and south? A. Yes, sir, I am quite positive in my own mind that there was from thirty to sixty feet on the east line.

Q. That is if you got the boundaries right at the water there at its ordinary level? A. Yes, sir.

Q. Do you remember whether it was ordinary weather? A. I do not. I was down there frequently. I knew the boundary.

Q. What called you down there frequently? A. I had a great

deal of business; my business was real estate, which called me all over the city.

Q. You had real estate in every part of the city? A. Yes, but more in this addition, which led me to make surveys.

Q. How came you to recollect so accurately about this little thing, when you can't recollect how far the piers extended back or into the lake? A. There was a channel through there, but how high the piers were built from the water's edge, I don't recollect.

Q. How wide was the channel at that time? A. Two hundred feet.

Q. Don't you know there was a sand-bar on the north side of the channel. A. I speak of the channel between the piers.

Q. Was there not a bar there? A. I think the channel of the river was, probably, not more than thirty or forty feet wide in '34.

Q. In June, '35? A. Well, in '35, I know it was not fully open.

Q. Don't you know the channel varied, and when there was a freshet, it was sixty or eighty feet wide, and then the sand would blow down and stop it up? A. I don't know that it blew down the river.

Q. Didn't it blow down the lake, and it piled up the bar where it is now? A. That was going on then. That channel may have been thirty or forty feet wide; it was constantly changing and probably always will continue to change.

Q. The river itself has been changing ever since you knew it? A. Yes, sir.

Q. Have you known the mouth of that river to be down below Mrs. Clark's? A. Yes, sir.

Q. And you have known it when there was no mouth at all, and it run down and discharged itself by percolating through the sand, by leakage? A. Yes, sir.

Q. So that you could cross it without wetting your feet? A. Yes, sir.

Mr. Wills—When was that? A. I forget now; in 1821 or '22, we could go out where the pier now is.

The offer was now renewed by the defendants, in connection with the proof of possession, in view of the Statute of Limitations, and under a claim of color of title, of the Tax Receipts on water lot 35 from 1836 to 1849 inclusive; the receipt for taxes of 1849, dated 1850, reading, "Kinzie's Addition to Chicago, *sand-bar east of water lots*;" the defendants in this connection offering to prove that no taxes were assessed separately upon this portion east of lot 35 until 1849; to which proposition plaintiff's counsel objected. The Court sustained the objection, excluding the tax receipts; to which ruling defendant's counsel excepted.

Mr. Wills offered in evidence a report by Wm. Howard, and

accompanying map, dated February 24, 1830, in reference to the Chicago harbor; but subsequently withdrew them.

Mr. Wills renewed the offer of the deed from John H. Kinzie to Wm. S. Johnston, dated July 7, 1857, for water lot 34 and accretions [see page 2] as evidence of a substantial reformation of the former deed.

THE COURT—I shall exclude this deed on the ground that it is incompetent for the party to come in and state what he intended to do at the time he made the original deed; and inasmuch as he cannot do that by matter *ex post facto*, he cannot do anything more to entitle the plaintiff to recover in this suit than what was conveyed at the time that deed was given. My view of the question in relation to the conveyance of property bounded on a water-course, where the property goes by a description, as a quarter section, or a lot, or anything else, is that it is competent for a Court to look into the circumstances as they existed at the time of the conveyance, for the purpose of construing the conveyance. The case put by the Supreme Court is an extreme case, where there is an immense amount of accretion formed upon a lot, and a conveyance is made of that lot; the presumption would undoubtedly be, under such circumstances, that by a mere conveyance of the lot, the accretion would not go. But at the same time, in the case of a small amount of accretions, which were deemed inconsiderable, or which might by possibility have been unknown to the party at the time, it seems to me, in construing deeds made under such circumstances, it is proper for the Court to look into all the circumstances at the time. But I understand that the Supreme Court did not take that view of it. I should like to have that point presented to them again. My own view of the law is that I can look at all the circumstances as they existed at the time, for the purpose of construing this deed of October 22, 1835. The state of facts at the date of the deed should not be confused with the state of facts at the time of the survey.

Judge Morris—The Court will understand us as excepting, of course.

Mr. Wills said it would be understood that all the maps referred to by the witnesses were in evidence.

Agreed to.

Mr. Wills presented another map or drawing, which it was agreed he might use in argument by way of illustration.

The counsel on both sides now announced that all the evidence was in; and, after an arrangement that three counsel on each side should argue the case to the jury two hours each,

Mr. Wills proceeded to argue the case on behalf of the plaintiff.

Mr. Fuller, for defendants, followed, at the close of whose argument

Court adjourned.

Tenth Day—Tuesday, April 3d, 1860.

Judge Morris, for the plaintiff, proceeded to address the jury.

Mr. Van Arman followed, replying and arguing the case for the defence.

Mr. Lincoln, also for the defendants, addressed the jury, occupying the remainder of the day.

Court adjourned.

Eleventh Day—Wednesday, April 4th, 1860.

Mr. Arnold, for the plaintiff, closed the series of arguments.

INSTRUCTIONS ASKED BY PLAINTIFF.

The following instructions were asked by the plaintiff:

1. That if the Jury believe the evidence of the plaintiff, he has shown a clear and connected title to water lot No. 34, in Kinzie's Addition to Chicago; and that if the Jury further believe that at the date of the survey of Kinzie's Addition, the said water lot had a lake front which remained substantially the same south of the point where its east line originally struck the lake, at the date of the conveyance to the plaintiff, he is entitled to a share of the accretion in front of the original shore line in proportion to the original front of the said lot upon the lake.

2. That if the Jury should believe from the evidence that water lot No. 34 had an original lake front, and that accretions had formed beyond the east line thereof, when extended southwards to the north pier, at the date of the deed to the plaintiff; yet, if at that time there had been no previous adverse occupancy of the said accretions by the defendants, and the lot and the accretions thereto were treated by their former owners as a unit, and the plaintiff was put in possession of the whole, receiving the same possession of the accretion as of the original water lot, under a claim of right thereto from his immediate grantor, the plaintiff, as against the defendants, is entitled to a recovery of the said accretions, unless the defendant shows some other title than that of a subsequent usurped possession thereof.

3. That a town or city lot, in common with any other tract of land, having originally a water front, to which accretions have formed since it was originally laid out, may be conveyed as a whole by its successive owners, without regard to the extent or the direction in which the accretions have formed—by its original

description merely—if, in view of all the facts and circumstances connected with the transaction, it sufficiently appears, that the lot thus increased had not been sub-divided and was still known by its original name, and that it was the manifest intention of the parties, from time to time, that it should pass as an entire tract, without any sub-division or reservation of the accretions so formed; and that if the Jury should find the facts to have been such in this case, in regard to water lot No. 34, the plaintiff will be entitled to recover the accretion east of it to Lake Michigan.

4. That the maps and surveys, and the documentary evidence offered by the plaintiff, in the absence of any evidence tending to impeach the capacity or the integrity of those who made them at the time the facts occurred, furnish more reliable evidence of boundary, locality, and the like, than the memory of witnesses, after the lapse of a quarter of a century, when the original condition of things has materially changed.

5. That the official reports and accompanying maps of Capt. Allen, in regard to the construction of the Chicago Harbor, and in regard to all facts directly connected therewith, furnish original and independent evidence in relation thereto, so far as they may affect the questions of boundary in this case, as being the official statement of the officer in charge of the work at the time, whose duty it was to obtain and report the facts to Government, and among others—the facts in regard to the formation of accretions on the north side of the north pier, the rapidity and extent of their formation at different dates, the soundings and depth of the water at different points, and at the different dates named therein as marked on the accompanying maps—because such statements regarded matters directly affecting the work in charge, and were thus connected with the discharge of his official duty.

6. That in the absence of any evidence tending to impeach the accuracy or the integrity of Capt. Allen, his official statements in regard to the facts and particulars above named, furnish more reliable evidence than the memory of any number of witnesses, however respectable, given after the lapse of a quarter of a century, in regard to matters to which their attention was not specially called at the different times mentioned.

7. That it is immaterial *where* the recorded plat referred to in the deeds to the plaintiff and the defendants, represents the lake shore line to have been originally, at the date of the survey of Kinzie's Addition to Chicago, if, from the base on North Water street, and the direction of the side lines at right angles thereto given on the plat, these side lines would in point of fact have struck the lake at a less distance than that represented on that plat.

8. That in determining the preliminary fact, where the lake shore was at the date of the survey of Kinzie's Addition, as a step towards determining where it was at the date of the deed to

the plaintiff, so far as either of the plats, the original or the recorded plat can furnish evidence on that point, the original map, in connection with the evidence of the surveyor in regard to both of them, furnishes the best evidence of that fact.

9. That notwithstanding the reference made to the recorded plat contained in the deeds to the plaintiff and the defendants, neither the original nor the recorded plat furnishes conclusive evidence, as to the locality of the original shore line at the time of the survey of Kinzie's Addition—but its actual locality at that or any subsequent date is a question of fact to be determined by the jury, in view of all the evidence on the subject, including both plats and the evidence in regard to them—so far as that fact may be material as a preliminary fact in enabling the jury to determine the locality of the lake shore lines in October, 1835, and whether at that time lot thirty-four had a lake front. The false description in the deed, may be rejected as surplusage, if a sufficient description remains to ascertain its application.

10. That the ordinary rules for the partition of accretions do not apply without modification, to accretions found in front of town or city property, lying between streets or other like public avenues of communication to the water.

11. That in such case, in order to preserve as near as may be, the general plan adopted in the subdivision of the town or city and at the same time to secure to the several riparian owners their antecedent relative rights, such streets or avenues must be extended over the accretions in their original directions, except when they strike the original water line obliquely, in which case they must be extended at right angles to their original termination on the water; and that as thus extended, they severally become the extreme boundaries of the accretions formed between each two of them; and that these several accretions thus bounded are to be divided as separate accretions, *pro rata* among the several intermediate riparian owners, according, to the former frontage of their several properties on the old water line.

12. That in this case, the accretions between North Water street, when extended at right angles to the original terminations of that street on the lake, on the north, and the north pier as the southern boundary are to be divided between the owners of the intermediate lots between those boundaries, in proportion to the original front of those lots on the lake, without regard to the extent of the accretions north of North Water street as thus extended, and without including the new shore line the pier front on the south.

13. That in the division of the accretions formed in this case, the pier shore line must be excluded in estimating the length of the new shore line, and for the same reason, that the prolonged lines of the streets extended over the accretion are to be excluded. That a party having two corner water fronts, as the plaintiff in this

case, on one or more water highways, is entitled to the benefit of a side extension of one of those water fronts, without computation as much as a party having two corner fronts—one on a land highway and another on a water highway, is entitled to the benefit of a side extension on the land highway, without computation, in the ascertainment of the new water line.

14. If the Jury shall believe from the evidence that the plaintiff and Hubbard held a title bond from Robert A. Kinzie, the holder of the legal title, for the conveyance of the lot thirty-four, dated June 9, 1835, and that Hubbard was on the property, frequently claiming the same, and afterwards had the same conveyed by said Kinzie to the plaintiff by the deed of October 22, 1835, and put plaintiff in possession by going on the lot and pointing it out to him at the date and delivery of the deed, then in such case the title to the said lot will relate back to the date of the title bond so far as to enable the plaintiff to recover the possession of the land, which may have been made on the water line of lot thirty-four, after the date of the title bond of said Kinzie, as against the defendants, if they subsequently entered upon the same without any title to the same.

INSTRUCTIONS ASKED BY DEFENDANTS.

The following instructions were asked by the defendants:

1. If the Jury believe, from the evidence, that on the 22nd day of October, 1835, (the date of the deed to plaintiff,) that the east line of water lot 34, carried south from North Water street, at right angles to said street, to the pier, did not strike the shore of the lake before it struck the pier, then the plaintiff cannot recover.

2. If the Jury believe, from the evidence, that when Kinzie's Addition to the City of Chicago was laid out, the east line of water lot 34 struck the place where the north pier was afterwards built before it would strike the water of the lake, then the plaintiff cannot recover.

3. The maps, plats and drawings before the Jury do not of themselves furnish any evidence of the location of the boundary lines of any of the property in question, but are only to be regarded by the Jury as illustrating and explaining the testimony of the witnesses, and not as furnishing any original evidence where the boundary lines were located upon the ground.

4. In this action, the plaintiff must recover upon the strength of his own title, and unless the Jury believe, from the evidence, that water lot 34 had a water line upon the lake, north of the north pier in the Chicago harbor, on the 22d day of October, 1835,

then the plaintiff cannot recover, notwithstanding the defendants may have shown in separate titles to the accretions, east of said lot.

5. If the Jury believe from the evidence, that water lot 34 had no line upon the lake when it was originally laid out, and that in consequence of the construction of the south pier, in the Chicago harbor, and the opening of a channel for the river, along and north of that pier, the land at the corner of the north shore was worn and washed away, so that the water line of the lake was carried back to some point on water lot 33, at the time the construction of the north pier was begun, the plaintiff cannot recover; if the Jury further believe, from the evidence, either that water lot 34, had, when laid out, no water line upon the lake, north of the north pier, or, that by the 22nd day of October, 1835, the accretions had formed so far eastward from the new water line that lot 34 had not then any water line in the lake, north of the pier.

6. If in ordinary condition of the water of the lake, when it was calm weather, the shore of the lake was east of the line dividing water lots 34 and 35, as the date of the plaintiff's deed, that is, on the 22d day of October, A. D. 1835, all the way from the north end down to the pier, then the Jury ought to find the defendants not guilty.

7. If the accretion on the 22d day of October, A. D. 1835, extended so far east as to make the shore of the lake, in ordinarily calm weather, east of the line dividing water lots 34 and 35, so that said line struck the pier before it reached the water, then the Jury must find the defendants not guilty.

8. The true inquiry for the Jury is, where was the lake shore on the 22d day of October, A. D. 1835? Did the line dividing lots 34 and 35 touch the water of the lake on that day before it reached the pier? If that line extended to the pier without touching the lake shore, then the Jury ought to find a verdict for the defendants, even though the shore was originally west of that line, if by accretion or other causes, the lake shore was east of that line, all the way down to the pier, on the said 22nd day of October.

CHARGE OF THE COURT.

The Court proceeded to charge the Jury as follows:

GENTLEMEN OF THE JURY:—The remarks which I shall make to you in this case will be very brief; because, as I understand the matter, the controversy is within a very small compass.

This action is brought to recover a portion of the accretions which have formed on the shore of Lake Michigan, immediately north of the north pier of the Chicago Harbor. Both parties claim title from Robert A. Kinzie, who purchased the land from the United States, and upon which he caused a survey to be made into blocks, lots and streets in February, 1833, called Kinzie's Addition to Chicago. Lots were laid off on North Water street sixty feet front, and with side lines at right angles to the street, and running to the lake and to the river. Lots 34 and 35, on the plat of the survey, had for their southern boundary Lake Michigan. There is an admitted discrepancy between the original and recorded plat (of January, 1834.) as to the length of the side lines of these lots, but it is conceded by both parties that this discrepancy does not affect the actual length of these lines as they existed on the ground, the law being that the lots would run to the water, whether we regard the original or the recorded plat. In 1834 the north pier was constructed by the Government, and this run through some of the lots fronting on North Water street, and the river in consequence of the erection of the pier, changed its channel, and was carried across the old sand bar and through some of these water lots.

The plaintiff owns lot 34, through deeds made by Robert A. Kinzie to John H. Kinzie, of Feb. 25, 1833, and by John H. Kinzie, to Robert A. Kinzie, of June 9, 1835, and by deed from the latter to himself, (the plaintiff,) of Oct. 22, 1835. The defendant, Jones, owns lot 35, which is the one next east of 34, by deeds from Robert A. Kinzie to John H. Kinzie, of February 25, 1833, and from the latter to him, (the defendant,) of the 10th of September, 1834. The controversy grows out of the increase of land caused by the construction of the piers. This case has been several times tried heretofore, and has been before the Supreme Court of the United States; and some points have been decided by that Court, which must be adopted as the law of this case. It seems to be agreed by the counsel here on both sides, that the Supreme Court have ruled that the deed of the plaintiff of Oct. 22, 1835, covered all the ground there was at its date between the side lines of 34, and between North Water street and the water of the lake, by virtue of the description contained in it; and if there had been any accretions within those boundaries prior to the date of the deed, they would pass to the plaintiff by the deed. I understand this is agreed to by the counsel.

This being so, the controversy depends upon the point whether lot 34 had a water line upon the lake north of the north pier; in other words, whether the dividing line between 34 and 35 struck the lake, before it reached the pier, at the date of the deed to the plaintiff, October 22d, 1835. If at that time lot 34 had a water front north of the north pier, I understand the counsel for the defence admit that the plaintiff was entitled to the accretions which might form on that water front.

Mr. Lincoln—That is so.

THE COURT—Then, gentlemen, the controversy turns upon what the fact was on the 22d of October, 1835, as to this water front. Had lot 34 a water front at that time, north of the north pier? And nearly the whole testimony which has been introduced on both sides, has had a bearing on that point, for the purpose of enabling you to understand and know how the fact was.

Having stated these matters in relation to the questions of fact which you are to determine, and what are the questions of law bearing upon the facts, the Court does not propose to go at any very considerable length into the testimony which may bear upon this main point; it will only direct your attention to some of the testimony.

In the first place, we have the testimony of a vast number of witnesses—a "cloud of witnesses" almost, in relation to their knowledge of where the original lake shore was from the time of the survey in 1833, down to the date of the deed, October 22d, 1835. I stated during the progress of the trial, and I state now, and I do not understand that there is any serious controversy in relation to that matter, that if you believe the facts stated in relation to these land marks, as for instance, where the first crib in the north pier was put down, and where the brush was found in the south pier; then I do not understand that there is any question as to where the lake shore was in 1833.

If it be true that the north pier was put on the water line as it existed at that time, then you will have to deduct the amount of land which you are satisfied from the evidence was carried off by the water at the time the river broke through in February, 1834, to determine where the original lake shore was in 1833. Of course, those actual facts, about which there is no dispute, some of which have been brought to light since this suit was commenced, are of much more consequence than the memory of witnesses, where there have been great changes in the lake shore.

You have, in the first place, as I have stated, the testimony of witnesses as to their knowledge of where the lake shore was in 1833, and so on down to 1835. There is a good deal of conflict upon this point among the witnesses. It is for you to determine where the truth may be in relation to that. The only point of materiality as to this is, that having ascertained where the lake shore was in 1833, you can follow any changes, so far as the evi-

dence established any, down to 1835—the material fact which is to decide this case being, where was the lake shore at that time.

In addition to the positive testimony of witnesses, you have also in evidence, as connected with the testimony, a number of maps and plats. These plats and maps are not otherwise material, than so far as they may be connected with the statements of the witnesses and illustrative of their testimony. These surveys, plats and maps which have been introduced, are not in themselves independent evidences, but are to be received by the jury in connection with the evidence. So far as the witnesses establish that they are correct, they are to be received by the jury, and in no other way. This is true of all the plats and maps that are introduced. As to the "Original Map," you have the statement of Mr. Snow in connection with that. It has been allowed to go to you, not for the purpose of determining the actual length of the lines by the dividers upon the map; but simply to explain and elucidate, so far as it may do so, the statement of Mr. Snow, the surveyor. His statement is, that these side lines were not all actually run, and that the lake shore then was not meandered.

So in relation to nearly all the other plats and maps. There is one remark, which perhaps should be made in regard to the plats and maps of Lieutenant Allen, who had charge of the Government works here from 1834 to 1838, I believe. He was the officer under whose direction the piers were constructed during that time. His reports, which he made to the Government from time to time, were official acts, and are evidence to be received by us of what he did officially. It seems that accompanying some reports that he made in 1837 and 1838, there are diagrams or plats intended to represent, with greater or less accuracy, the condition of the piers and the harbor at that time; and upon these plats there was a representation of accretions that had been made. The Court has allowed these plats or diagrams, accompanying the reports, to go to you as explanatory of them. So far as they indicate anything within the scope of his duty as an officer, we receive them and regard them; so far as they indicate anything outside of the scope of his duty as an officer, we are not bound by the statements that are contained therein. I may refer particularly to the diagram of the accretions, which it is stated they represent. As I understand these plats they were made by Lieut. Allen, and accompany his report, simply for the purpose of enabling the Government at Washington, to understand the progress and condition of the work. It does not appear, as I understand by the reports and representations, that there was any actual survey made of the accretions which had formed on the old lake shore north of the north pier; but they are merely put there to enable the Government to know that certain accretions had formed there. And, as it seems to the Court, it would not be just or right to either of these parties, that their interest should be controlled by a diagram

which accompanied the report of Lieut. Allen, when there is nothing upon the face of the diagram which shows that there had been an actual survey made. So far as the diagrams show that there had been an actual survey made, they are entitled to some credit undoubtedly; but even that, I apprehend, would not absolutely control the rights of these parties as to this property north of the north pier.

That, gentlemen, is about all that the Court deems it necessary to say in relation to the proof bearing upon this question, as to the amount of the accretions which were formed on the lake shore, up to October 22, 1835, and as to where the old lake shore was.

As I understand the opinion of the Supreme Court, if you shall find from the evidence that this lot 34 had a water front at that time north of the north pier, then the plaintiff may be entitled to the accretions which were formed upon that water front in proportion to its extent, which you will also find. If at that time there was no water front north of the north pier on lot 34, according to the boundaries above mentioned, then the question of accretion does not arise, and the plaintiff is not entitled to recover.

As to the manner in which the division shall be made, if you shall find that there was a water front at that time, I feel myself bound by the rule laid down in this case, by the Supreme Court, whatever my own view may be in relation to the subject. I shall, therefore, so far as that is concerned, instruct the jury that they should take the old water front and the new water front—the pier as well as the rest, and make the division according to the principle there laid down. [And the Court thereupon instructed the jury, if they should find a water front on lot 34, at the time indicated, to make the division in accordance with the rule heretofore laid down by this Court in the former trial, except as limited and qualified by the decision of the Supreme Court, which rule and limitation and qualification are to be found in this case, as reported in Volume 18 Howard's Reports, page 150.]

To the instructions as given by the Court to the jury, and to each part thereof, the plaintiff then and there excepted, and the plaintiff also excepted to the refusal of the Court to give the instructions requested by the plaintiff, severally and collectively.

The jury now retired, and after an absence of several hours, returned with the following verdict:

"We, the jury, find the defendants NOT GUILTY."

EXHIBITS.

(*For map marked Exhibit "A." see original page* 519.)

I hereby certify that the within is a true map of Kinzie's Addition to Chicago of N. fraction of section 10, Township No. 39, N. range 14 E., of the third principal meridian.

(Signed,) JEDDIAH WOOLEY, JR.,
County Surveyor, Cook County, Ills.

State of Illinois, }
Cook County. }

Personally appeared before me, (one of the Justices of the Peace in and for the County of Cook, State of Illinois,) Robert A. Kinzie, and acknowledged himself to be the proprietor of Kinzie's Addition to Chicago of N. fraction of section 10, Township No. 39, N. range 14 E., and he is personally known to me as such proprietor.

In testimony whereof, I have hereunto set my hand and seal this 22d day of February, A. D. 1833.

(Signed,) ISAAC HARMON, J. P. [SEAL.]

Filed for Record, February 22d, 1833.

(Signed,) RICHARD J. HAMILTON,
Rec'r Cook County, Ills.

(*For map marked Exhibit "B." see original page* 521.)

"I hereby certify, that the within is a true map of Kinzie's Addition to Chicago of N. fraction of section 10, Township No. 39, N. range 14 E., of the third principal meridian.

JEDDIAH WOOLLEY, JR.,
County Surveyor of Cook County, Ills.

State of Illinois, }
Cook County. }

Personally appeared before me, (one of the Justices of the Peace, in and for the County of Cook, State of Illinois,) Robert A. Kinzie, and acknowledged himself to be the proprietor of "Kinzie's Addition to Chicago, of N. fraction of section 10, Township No. 39, N. range, 14 E., and he is personally known to me as such proprietor.

In testimony whereof, I have hereunto set my hand and seal this twenty-second day of February, A. D. 1833.

ISAAC HARMON, J. P., [SEAL.]

(*For map marked Exhibit "C." see original page* 522.)

Bureau of Topographical Engineers,
Washington, May 4th, 1858.

I, J. J. Abert, Colonel Corps Topographical Engineers, do hereby certify, that the annexed map of the improvement of the Harbor of Chicago, Illinois, at the close of the year 1837, is a true and literal exemplification of a tracing of the same now on file in the Bureau of Topographical Engineers.

J. J. ABERT,
Col. Corps T. E.

Be it known, that J. J. Abert, who has signed the above certificate, is Colonel of Topographical Engineers in charge of the Topographical Bureau, and that to his attestations as such, full faith and credit are due and ought to be given.

In testimony whereof, I have hereunto subscribed my name, [SEAL.] and caused the seal of the War Department to be affixed on the fourth day of May, in the year of our Lord, one thousand eight hundred and fifty-eight.

JOHN B. FLOYD,
Secretary of War.

(*For map marked Exhibit "D." see original page* 524.)

Bureau, Topographical Engineers,
January 31st, 1832.

Fac-simile copy from original in this office.

J. J. ABERT,
Col Corps T. E.

Be it known, that J. J. Abert, who has signed the foregoing, is Colonel of the Corps of Topographical Engineers in charge of the Topographical Bureau, and that to his attesttations as such, full faith and credit are due and ought to be given.

In testimony whereof, I have hereunto subscribed my name [SEAL.] and caused the seal of the Department of War to be affixed on this third day of February, in the year of our Lord, one thousand eight hundred and fifty-two.

C. M. CONRAD.
Secretary of War.

War Department,
February 9th, 1852.

Pursuant to the 3rd section of the Act of Congress, approved 22d day of February, 1850, entitled, "An Act for authenticating certain records," in connection with the 5th section of the Act of Congress, approved September 15th, 1798, entitled "An Act to

provide for the safe keeping of the Acts, Records and Seal of the United States, and for other purposes."

I, Charles M. Conrad, Secretary of War, do hereby certify, that the above is a true copy of the original in the office of the Topographical Engineers of this Department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department to be affixed at the City of Washington on the day and year above written.

[SEAL.]

C. M. CONRAD,
Secretary of War.

(*For map marked Exhibit "E.," see original page* 525.)

(*For map marked Exhibit "F.," see original page* 526.)

(*For map marked Exhibit "G.," see original page* 527.)

(*For map marked Exhibit "H.," see original page* 528.)

City Surveyor's Office,
Chicago, Oct. 14, 1859.

I hereby certify that I have surveyed the present shore line of Lake Michigan, in front of Kinzie's Addition to Chicago, and that the annexed map is a correct representation of the same as surveyed. I have further represented upon said map the extension of the streets and lot lines, as described in the notes numbered from 1 to 5, above.

SAMUEL S. GREELEY,
City Surveyor.

(*Copy.*) *Documents proving pre-emption, referred to on page 2d, Printed Report.*

The evidence of Robert A. Kinzie, of Cook County, Ill., on application for the purchase of the N. Frac. of Section No. 10, of Township No. 39, N. in Range No. 14, E., under the provision of an Act of Congress of the 29th day of May, 1830, granting pre-emptions to settlers on the public lands, and of Jean Bt. Beaubien, in confirmation of the claim.

Interrogatory 1st, by Register:

Did you cultivate any part of the aforesaid tract of land by raising grain thereon, in the year 1829?

Answer. I did.

2d. Was you in possession of said improvement on the 29th day of May, 1830?

Answer. I was.

3d, by Receiver. Has any other person any pre-emption claim upon said lot?

Answer. I have no knowledge of any other claim.

(Signed) ROBERT A. KINZIE.

Question to Jean Bt. Beaubien, by Register:

Are you acquainted with the said Robert A. Kinzie, and the facts set forth in his above answers?

Answer. I am acquainted with the said Kinzie, and know that he cultivated a part of the aforesaid tract of land in 1829, and was in possession of the same on the 29th day of May, 1830, and do fully believe that all the facts set forth in his answers as above, are true.

(Signed) J. BT. BEAUBIEN.

State of Illinois, }
Crawford County. }

I do certify that the aforesaid Robert A. Kinzie and Jean Bt. Beaubien, did sign the above answers, and were sworn to the truth thereof, before me, this 7th day of May, 1831.

D. BOATRIGHT, [SEAL] J. P.

(Copy.)

Land Office, Palestine, Illinois, }
24th August, 1852. }

SIR:—Enclosed herewith you will receive the original proof on which Palestine pre-emption entry No. 2842 was allowed, asked for by your letter of 7th inst.,

I am, very respectfully,
your obedient servant,
J. M. McLEAN, *Register.*

Commissioner of the General Land Office.

General Land Office, }
September 25th, 1857. }

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the annexed copies of the original application and proof of Robert A. Kinzie, and the letters transmitting the same, are true and literal exemplifications of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

THOS. A. HENDRICKS,
Commissioner of the General Land Office.

Certificate of Register and Receiver, referred to on page 2, Printed Report.

Land Office at Palestine, Ills., May 7, 1831.

Pre-emption No. 2842.

It is hereby certified, That in pursuance of law, Robert A. Kinzie, of Cook County, Illinois, on this day purchased of the Register of this Office, the Lot or North Fraction of Section number Ten, of Township number thirty-nine, north in Range number Fourteen East, containing $102\frac{29}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred and twenty-seven dollars and eighty-six and a-quarter cents, for which the said Robert A. Kinzie has made payment in full, as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office, the said Robert A. Kinzie shall be entitled to receive a Patent for the lot above described.

JOSEPH KITCHELL, *Register.*

No. 2842.

Receiver's Office, at Palestine, Ills., May 7, 1831.

Received from Robert A. Kinzie, of Cook County, Ill., the sum of one hundred and twenty-seven dollars and eighty-six and one-fourth cents, being in full for the N. Fraction of section No. 10, Township No. 39, N. Range, No. 14, E., containing $102\frac{29}{100}$ acres, at $1 25 per acre, $127 86¼.

G. W. SMITH, *Receiver.*

General Land Office, September, 17th, 1857.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the annexed papers are true and literal exemplifications of the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written. [SEAL.]

THOS. A. HENDRICKS,
Commissioner of the General Land Office.

(*Patent from the U. S. to Robert A. Kinzie, referred to on Page 2, Printed Report.*)

The United States of America:

To all to whom these presents shall come, greeting.

Pre-emption Certificate, No. 2842.

Whereas, Robert A. Kinzie, of Cook County, Illinois, has de-

posited in the General Land Office of the United States, a certificate of the Register of the Land Office in Palestine, whereby it appears that full payment has been made, by the said Robert A. Kinzie, according to the provisions of the Act of Congress, of the 24th of April, 1820, entitled an Act making further provisions for the sale of the public lands, for the Lot or North Fraction of Section Ten of Township Thirty-nine, north of Range Fourteen, east, in the district of lands, subject to sale (formerly at Palestine, now) at Chicago, Illinois, containing one hundred and two acres and twenty-nine hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General which said tract has been purchased by the said Robert A. Kinzie.

Know know ye, that the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress, in such case made and provided, have given, granted, and by these presents do give and grant unto the said Robert A. Kinzie and to his heirs, the said Tract above described to have and to hold the same together with all the rights, privileges immunities, and appurtenances of whatsover nature thereunto belonging, unto the said Robert A. Kinzie, and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the ninth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, and of the Independence of the United States the sixty-first.

[SEAL.]

By the President.

MARTIN VAN BUREN.
By A. VAN BUREN, *Sec'y.*

Recorded, Vol. 12, Page 1.

HUDSON M. GARLAND,
Recorder of the General Land Office.

GENERAL LAND OFFICE,
September 18th, 1857.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the record of this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

[SEAL.]

THOS. A. HENDRICKS,
Commissioner of the General Land Office.

(*Copy of Deed from Robert A. Kinzie to John H. Kinzie, referred to on page 2d, of the Printed Report.*)

This Indenture, made and entered into this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and thirty-three, by and between Robert A. Kinzie, of the town of Chicago, Cook County, Illinois, of the first part, and John H. Kinzie, of Fort Winnebago, Brown County, Territory of Michigan, of the second part, witnesseth, that the said Robert A. Kinzie, party of the first part, for and in consideration of the love and affection he bears to the said John H. Kinzie, party of the second part, aforesaid, and for the further consideration of the sum of twenty dollars, current money of the United States of America, by the said John H. Kinzie, in hand paid to the said Robert A. Kinzie, the receipt whereof is hereby acknowledged and from the payment thereof the said John H. Kinzie is hereby discharged, hath this day granted, bargained and sold, aliened, released and confirmed, and by these presents doth grant, bargain and sell, alien, release and confirm unto the said John H. Kinzie, party of the second part aforesaid, all the right, title, claim and interest of him, the said Robert A. Kinzie, party of the first part, aforesaid, of, in and to the following described lots or parcels of land, situate, lying and being in Cook County, Illinois, and in Kinzie's Addition to the town of Chicago, and known and designated on the plan of the said addition to the said town of Chicago, as follows, viz.: Lot number two, in block number one; lots number two and four, in block number two; lots number five and eight, in block number four; lots number six, seven, eleven and twelve, in block number five; lot number two, in block number twelve; lots number one and two, in block number thirteen; lots number one, five, eight and twelve, in block number fifteen; lots number three and ten, in block number sixteen; lots number three and ten, in block number seventeen; and water lots number two, twelve, fifteen, sixteen, twenty-one and twenty-five, thirty, thirty-four and thirty-five, and whole blocks number nineteen, twenty-three, twenty-four, thirty-eight, forty, forty-two, forty-three, forty-six, forty-eight and fifty-one, and the west half of block number eleven, all of which may be seen by reference to the plan of the said addition to the said town of Chicago, now on file in the Recorder's office of Cook County, Illinois. The said lots and blocks being parts and parcels of the north fraction of section number ten, township number thirty nine, north range fourteen east. To have and to hold the said lots and blocks of land, together with all and singular the rights, privileges and appurtenances, rents, issues and profits, remainder and remainders, reversion and reversions to the said John H. Kinzie, his heirs and assigns forever, and to his and their only proper use, benefit and behoof. And the said Robert A. Kinzie hereby covenants and agrees to and with the said John H.

Kinzie that before the ensealing and delivery of these presents he was well seized of the premises hereby conveyed of a good indefeasable estate in fee simple, and that the same was free from all incumbrances whatever; and he further covenants and agrees to and with the said John H. Kinzie that he will warrant and forever defend the premises hereby conveyed against the claim or claims of any person claiming by, through, or under him, or against the claim or claims of any other person or persons whomsoever. In testimony whereof the said Robert A. Kinzie, party of the first part, aforesaid, hath hitherto set his hand and affixed his seal the day and year first above written.

R. A. KINZIE, [SEAL.]

Signed, sealed and delivered in the presence of
DAVID HUNTER,
GHO. KERCHEVAL,
JAMES KINZIE.

State of Illinois, } ss.
Cook County. }

This day, personally appeared before me, the undersigned, a justice of the peace in and for said county, Robert A. Kinzie, who is personally known to said justice to be the real person who executed the foregoing deed of conveyance and who then, before said justice, acknowledged that he signed, sealed and delivered said deed freely and voluntarily for the uses and purposes therein mentioned and contained.

Given under my hand and seal, this 25th day of February, 1833.

ISAAC HARMON, J. P. [SEAL.]

(Endorsed on back.)

Recorder's Office, Cook Co., Illinois.

This is to certify that the within deed of conveyance from Robt. A. Kinzie to John H. Kinzie, was left for record on the 26th day February, 1833, and recorded on the 27th of the same inst., in book A, pages 97 and 98.

Given under my hand and private seal, no seal of office being provided at Chicago, this 27th day of February, 1833.

RICH. J. HAMILTON, *Recorder.*

The following is a copy of deed from John H. Kinzie and wife to Robert A. Kinzie, referred to on page 2d of the printed report.

John H. Kinzie and wife to Robert Kinzie.

This indenture, made the ninth day of June in the year of our Lord one thousand eight hundred and thirty-five, between John H. Kinzie and Juliette A. Kinzie, (wife of the said John,) of the town of Chicago, County of Cook, and State of Illinois, of the

first part, and Robert A. Kinzie, of the town and county aforesaid, of the second part, witnesseth that the said parties of the first part for, and in consideration of the sum of three thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to his heirs and assigns forever, a lot of land situate in "Kinzie's Addition to the town of Chicago," in the County of Cook, and State of Illinois, described as follows, viz., being water lot numbered thirty-four (34), agreeably to the town plat recorded in the office of the Recorder of the said County of Cook, to which reference may be had if necessary. Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever, of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises as above described, with the appurtenances, with the said party of the second part, and to his heirs and assigns forever. And the said John H. Kinzie, for himself, his heirs, executors, and administrators, doth covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he, as well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee simple, and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming, or to claim the whole or any part thereof, he will forever warrant and demand.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

JOHN H. KINZIE, [SEAL.]
JULIETTE A. KINZIE, [SEAL.]

Sealed and delivered in presence of
ISAAC HARMON.

State of Illinois, }
Cook County. }

This day came before me, the undersigned, a Justice of the Peace, in and for said county, John H. Kinzie and Juliette A., his wife, who are personally known to me to be the real persons who executed the annexed deed of conveyance, and then before me acknowledged that they executed the same freely and voluntarily for the uses and purposes therein contained.

She, the said Juliette A., wife of the said John H. Kinzie, on a private examination by me, separate and apart from her said husband, acknowledged that she executed the said deed freely, and with her own consent, without fear or compulsion of her said husband.

Given under my hand and seal, this
tenth day of June, A. D. 1835.

ISAAC HARMON, J. P., [SEAL.]

Recorded June 29th, 1835, in Book D., page 190.

State of Illinois, }
County of Cook. } *ss*

I, Louis D. Hoard, Clerk of the Circuit Court, and Ex-officio Recorder in and for said County in the State aforesaid, do hereby certify that the annexed writing contains a true and correct copy of a certain instrument filed in my office on twenty-ninth day of June, A. D. 1836, and recorded in Book D, of Deeds, at page 190, the parties to the same being John H. Kinzie and wife, of the first part, and Robert A. Kinzie, of the second part.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court at Chicago, in said County, this fifth day of June, A. D. 1856. [SEAL.]

L. D. HOARD, *Clerk.*

(*Bond for Deed from R. A. Kinzie to Gordon S. Hubbard, referred to on page 2d, of Printed Report.*)

Know all men by these presents, that I Robert A. Kinzie, of Chicago, in the County of Cook, and State of Illinois, am held, and stand firmly bound and obliged unto Gordon S. Hubbard, of said Chicago, in the penal sum of seventy thousand dollars, for the payment of which sum well and truly to be made to the said Hubbard, his heirs and assigns, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents, dated this tenth day of June, A. D., one thousand eight hundred and thirty-five.

The condition of this obligation is such that, whereas the said Kinzie has this day bargained and sold to the said Hubbard all of the following parcels, blocks and lots of land, situated and lying in Kinzie's Addition, to the said town of Chicago, and known and designated on the map of said Kinzie's addition, as follows, to wit: The whole of block number twenty-five (25), block number forty-seven (47), block twenty (20), and block number twenty-two (22), with the exception of the two corner lots, each fifty feet front on the easterly end of said block, that is to say, reserving a strip of land fifty feet wide, and extending through on the east side of said block, No. twenty-two; also the whole of block number forty-five. Lot number two (2), in block number fifteen (15), lot numbered

four (4), and lot numbered nine (9), in block number seventeen (17), lot number three (3), in block number four (4), lot number nine (9), in block number sixteen (16), lots number six, seven and twelve (6, 7 and 12), in block number twelve (12), also water lot number seven (7), water lot number thirty-three (33), and water lot number thirty-four (34), also lot number six (6), in block number twenty-nine (29), in the original town of Chicago, as first surveyed and laid out by the Canal Commissioners, for the sum of thirty-six thousand dollars, the receipt whereof is hereby acknowledged, to wit: the sum of six thousand dollars in cash, and the remaining thirty thousand dollars, secured by a mortgage from the said Hubbard to the said Kinzie, bearing even date herewith. And the said Kinzie has agreed, and does hereby agree to make, or cause to be made to the said Hubbard, his heirs and assigns, or to such person or persons as he or they may appoint, a good and sufficient warranty deed or deeds, of all or any part of the above described lots, whenever the said Hubbard, his heirs or assigns, shall request him so to do, it being however understood and agreed, that the said Kinzie shall not be required to make or execute any deed or deeds for the first four blocks mentioned in this bond, to wit: blocks twenty-five (25), forty-seven (47), twenty (20), and the said two lots in block twenty two (22), until the said mortgage shall have been fully paid and satisfied.

Now, therefore, the said Kinzie, his heirs or assigns, shall make and execute, or cause to be made and executed, good and sufficient deeds with full covenants of warranty and relinquishment of dower of the said lots and blocks of land, agreeably to the provisions and stipulations of this bond, then this obligation shall be null and void, otherwise it shall remain in full force and virtue.

In testimony whereof, I have hereunto set my hand and seal, at said Chicago, this tenth day of June, A. D. 1855.

R. A. KINZIE, [SEAL.]

In presence of
ISAAC HARMON.

(Endorsed on back.)

This instrument filed for Record, May 1, 1840, and Recorded in Book 4 of Deeds, page 269, on May 6, 1840.

ELI B. WILLIAMS, *Recorder.*

State of Illinois, } ss.
County of Cook. }

I, William L. Church, Clerk of the Circuit Court, and ex-officio Recorder in and for said County, in the State aforesaid, do hereby certify, that the annexed is a true and correct copy of a certain instrument filed in my office, on the first day of May, A. D. 1840, and recorded in Book No. 4 of Deeds, on page 269; the parties to the same being R. A. Kinzie, of the first part, and Gordon S. Hubbard, of the second part.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of our said Court at Chicago, this 21st day of March, A. D. 1860.

WM. L. CHURCH,
Clerk of the Circuit Court, and Ex-officio Recorder of Cook County.

Deed from Robert A. Kinzie and Wife to William S. Johnston, referred to on page 2d of Printed Report.

This Indenture, made the twenty-second day of October, in the year of our Lord one thousand eight hundred and thirty-five, between Robert A. Kinzie, of the County of Cook, and State of Illinois, and Girinthlin H., wife of the said Robert A. Kinzie, of the first part, and William S. Johnston, of the city of Cincinnati, in Hamilton County, and State of Ohio, of the second part—Witnesseth, That the said parties of the first part, for and in consideration of the sum of nine thousand six hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors and administrators, forever, released and discharged from the same, by these presents, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, all those certain lots or parcels of land, situate, lying and being in Kinzie's Addition to the Town of Chicago, and are known and described on the plat of said Addition as water lots, number 7, number 33, and number 34, as will more fully appear reference being had to said plat as recorded in the Recorder's office of the town of Chicago, in the county of Cook, and State aforesaid. Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances.

To have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever.

And the said Robert A. Kinzie, for himself, his heirs, executors and administrators, doth covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part at the time of the sealing and de-

livery of these presents, were lawfully seized in and of their own right, of a good, absolute and indefeasible estate of inheritance, in fee simple, of, and in all and singular the above-granted, bargained and described premises, with the appurtenances thereunto belonging, and have good right, full power, and lawful authority to grant, bargain and sell, and convey the same, in manner and form aforesaid. And the said party of the second part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part, their heirs and assigns, or of any other person or persons lawfully claiming, or to claim the same, and that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever. And also that the said parties of the first part, and their heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises, by, from, under or or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel, learned in the law, shall be reasonably devised, advised or required. And the said Robert A. Kinzie, his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming, or to claim, the same shall and will warrant, and by these presents for ever defend.

In witness whereof the first parties to these presents have hereunto set their hands and seals, the day and year first above written.

R. A. KINZIE, [SEAL.]
GIRINTHLIN H. KINZIE, [SEAL.]

Sealed and delivered in the presence of (the word "first" on the last line being first inserted. CAROLINE S. WOLCOTT.

fifty-seven, between said John H. Kinzie, of the first part, and said William S. Johnston of the second part, witnesseth, that the said John H. Kinzie, of the city of Chicago aforesaid, and Juliette A. his wife, for, and in consideration of twenty-five dollars, to them in hand paid, the receipt of which is hereby confessed, do grant, bargain, sell, quit claim, and release all our right, title, and interest, in and to all the accretion of said land made and formed upon said water line of lot number thirty-four, lying east and south of water line aforesaid. To have and to hold the same with the appurtenances thereto belonging, or in any wise or way appertaining unto the said Johnston, his heirs and assigns, forever.

In witness whereof we, the said John H. Kinzie and Juliette A. Kinzie, wife of said John, have hereunto set their hands and seals.

JOHN H. KINZIE, [SEAL]
JULIETTE A. KINZIE. [SEAL.]

The words "of South," in the fourth line from tops of second page interlined before signing.

(Witnesses)

C. BUTLER and JOHNSON.

State of Illinois, } ss.
Cook County. }

I, John W. Magill, a Notary Public in the said county in the state aforesaid, do hereby certify, that John H. Kinzie and Juliette A., his wife, personally known to me as the same persons whose names are subscribed to the annexed instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Juliette A., wife of the said John H. Kinzie, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

[SEAL.] Given under my hand and notarial seal, this seventh day of July, A. D. 1857.

JOHN W. MAGILL, *Notary Public.*

(Endorsed on back.)

State of Illinois, } 91,958.
Cook County. }

Filed for record 23d September, 1857, and recorded in Book 148 of deeds, page 177.

WM. L. CHURCH, *Clerk.*

State of Illinois, } ss.
County of Cook. }

Dec. 5th, 1835, on this day, personally came before the undersigned, Notary Public for the County of Cook, and residing at Chicago, in said County, Robert A. Kinzie, and Girinthlin H. Kinzie, wife of the said Robert, to me personally known as the real and identical persons who executed this deed of conveyance, and acknowledged that they signed, sealed, and delivered the same freely and voluntarily for the uses and purposes therein mentioned. The said Girinthlin H. Kinzie, was examined by me separate and apart from her husband, and she acknowledged that she executed this deed, freely and voluntarily, for the uses and purposed therein named, and with the intention of relinquishing all claim of dower to the premises described herein, and that she did the same, without force or compulsion, from her said husband, and I do further certify that the contents and meaning of this deed was fully explained and made known to her before she made said acknowledgment.

Witness my hand and Notarial seal, at Chicago aforesaid, the day and year first aforesaid.

RICHARD J. HAMILTON, [SEAL.]
Notary Public, Cook County, Illinois.

Recorder's Office, Cook County, Illinois:

This is to certify that the foregoing deed was left for Record on the 9th day of December, 1835, and recorded on the 23d day of December, 1835, in Book G. of Deeds, page 486–87.

RICHARD J. HAMILTON,
Recorder, Cook County, Illinois.

(*Quit claim deed from John H. Kinzie to Willliam S. Johnston referred to on page 2nd of printed report.*)

WHEREAS John H. Kinzie sold and conveyed to Robert A. Kinzie, in the year eighteen hundred and thirty-five, Water Lot number thirty-four (34), in Kinzie's Addition to the town of Chicago, in the State of Illinois, according to the original plat of said addition for a valuable consideration paid therefor, And whereas said Robert afterwards sold and conveyed his interest in said lot to William S. Johnston, of the city of Cincinnati, State of Ohio, for a valuable consideration paid to said Robert, and it was intended by said conveyances to have included all accretions of land made and formed upon the water line of said lot, number thirty-four, if there was any formed thereto after the original survey of said addition to the date of said conveyances by deeds if having been embraced in the sale. And whereas disputes about, the title to the accretions of land made on the water line of said lot thirty-four has arisen. Now, therefore, for the settlement of the same, his instrument, made this first day of July, eighteen hundred and

fifty-seven, between said John H. Kinzie, of the first part, and said William S. Johnston of the second part, witnesseth, that the said John H. Kinzie, of the city of Chicago aforesaid, and Juliette A. his wife, for, and in consideration of twenty-five dollars, to them in hand paid, the receipt of which is hereby confessed, do grant, bargain, sell, quit claim, and release all our right, title, and interest, in and to all the accretion of said land made and formed upon said water line of lot number thirty-four, lying east and south of water line aforesaid. To have and to hold the same with the appurtenances thereto belonging, or in any wise or way appertaining unto the said Johnston, his heirs and assigns, forever.

In witness whereof we, the said John H. Kinzie and Juliette A. Kinzie, wife of said John, have hereunto set their hands and seals.

JOHN H. KINZIE, [SEAL.]
JULIETTE A. KINZIE. [SEAL.]

The words "of South," in the fourth line from tops of second page interlined before signing.

(Witnesses)

C. BUTLER and JOHNSON.

State of Illinois, } ss.
Cook County. }

I, John W. Magill, a Notary Public in the said county in the state aforesaid, do hereby certify, that John H. Kinzie and Juliette A., his wife, personally known to me as the same persons whose names are subscribed to the annexed instrument of writing, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Juliette A., wife of the said John H. Kinzie, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

[SEAL.] Given under my hand and notarial seal, this seventh day of July, A. D. 1857.

JOHN W. MAGILL, *Notary Public.*

(Endorsed on back.)

State of Illinois, } 91,958.
Cook County. }

Filed for record 23d September, 1857, and recorded in Book 148 of deeds, page 177.

WM. L. CHURCH, *Clerk.*

(*Letter from Lieut. James Allen to Brigadier General Gratiot, referred to on page 3d. Printed Report.*)

Office of Public Works, Chicago, Illinois,
February, 26th, 1834.

SIR:—I have the honor to transmit herewith an abstract of disbursements on account of the Public Works at this place, embracing, as far as I have been able to collect them, all the outstanding debts contracted previous to the first of February, 1834, up to the time of my taking charge of the Works with all its proper vouchers.

The abstract is made in the name of Mr. H. S. Handy, as it belongs to the time of his agency for the Department, and most of the debts were contracted by him. A reference to the vouchers will show those contracted and left unpaid by Major Bender previous to first of November, 1833, and not embraced in his accounts.

Two or three small debts not exceeding in all fifty dollars, belonging to the same time, remain to be paid.

I also enclose my monthly estimates for February and March, from which it will be seen that I do not contemplate doing much on the Works before the first of April. I have four common hands and two principal workmen employed making wheelbarrows and other implements, and, when the weather permits, in completing the scow for the pile engine. Seven common laborers were retained through the winter until the first of February, when I discharged three of them.

As soon as I hear that the appropriation has passed, I shall advertise for materials for the north pier, to the construction of which, as far as the season and funds may permit, I propose to direct principally the operations of this year. A plan in detail of these operations will, however, be submitted in time for your consideration and decision.

The sinking of the detached part of the south pier constructed across the bar last season has not occurred in the manner expected by the Department. A heavy rain of twenty-four hours on the 13th and 14 insts. produced a sudden and almost unprecedented rise in the river of about three feet, which soon, with the assistance of several men under my direction, occasioned a great flow of water on both sides and under the crib into the lake. But the sand under the crib and on each side in the common level of the river was frozen into a solid mass about nine inches thick, which resisted the action of the water to remove it from these parts in the manner expected and as it might have done but for this circumstance. In consequence the great body of the river having a tendency to flow that way, soon formed a channel thirty or forty feet broad on the north side, which eventually undermined the ice and settled the crib on this side first, and very irregularly.

The whole of this part of the pier now stands inclined towards the channel—the northwest corner has sunk about eleven feet, the southwest six feet, the northeast five feet, and the southeast not at all.

The channel under it is choked, some of the side logs and ties have given away, but the crib generally is firm, being well made. It is expected that another rise will occur in the spring. When, by directing a portion of the water again on the south side of the crib it is hoped a settling of that side to a better position than it now has, may be effected. The new channel of the river, thus opened, is now about forty feet broad, and from ten to twelve feet deep across the bar to the lake, but the waves prevent its further action on the bars of the lake. The channel, however, if it does not fill up, (and from its present great depth it is not thought that it will,) will be of great service in affording a passage for the scows and boats necessary for the building of the north pier into the lake.

The old mouth of the river is still open and nearly half the river still flows out that way. The pier across the river does not well serve the purpose of a dam. Being filled in with loose stone only, and which rest on bottoms in the cribs, two or three feet above the bottom of the river, the water has a free passage through the pier in its whole length, and in general stages the river is not perceptibly higher above it than it is below it.

The pile engine and scows will be completed by the time they may be required.

I have the honor to be

Very respectfully, sir,

Your ob'dt. serv't.,

J. ALLEN,

Lieut. 5th Inf. on Eng'r Duty.

To BRIG. GENERAL C. GRATIOT,

Chief Engineer, Washington, D. C.

Bureau Topographical Engineers,
April 28th, 1858.

I certify that the foregoing is a true copy of the original, on file in this office, April 28, 1838.

J. J. ABERT, *Col. Corps T. E.*

Be it known, that J. J. Abert, who has signed the above certificate, is Colonel of the Corps of Topographical Engineers, and that to his attestations as such, full faith and credit are due and ought to be given.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the War Department to be affixed, [SEAL.] on this fourth day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

JOHN B. FLOYD,

Secretary of War.

(*Report of Lieut. Allen, Sept. 30, 1834, referred to on page 3d of Printed Report.*)

Chicago, Illinois,
September 30, 1834.

SIR:—In conformity with paragraph of General Army Regulations, I have the honor to submit the following observations on the operations of the Engineer Department for "improving the harbor of Chicago, Illinois," now under my direction.

The work was commenced in the summer of 1833, under the direction of Major Fowl first, and afterwards Major Bender, but such was the difficulty in a new and remote country, as this then was, in procuring the necessary implements, materials and workmen for the construction, that notwithstanding every exertion consistent with prudence and duty on the part of these gentlemen, the progress of the work was limited during the season to the laying of a crib-work dam or pier to the surface of the water nearly across the river, on the line of the south pier, and after an interval of about seventy feet, extending a detached pier two hundred and thirty feet long across the bar, separating the river from the lake. This last construction rested on the sand on a level with the surface of the lake and river, was six feet high, and floored on the second tier of logs, and filled with stone. The pier across the river was intended to direct the water into the channel around and under the portion of the pier so detached to enable it to sink as the action of the water might remove the sand from under it. This experiment, however, was not very successful in its object. The crib-work across the river was not so tight as to hinder the ordinary water of the river from passing through it and discharging at the usual mouth, and it was not till spring, when an unusual rise of water, produced by the overflowing of an extraordinary flood of the Des Plaines river in the Chicago, that the water made its way into the new channel cut out for it and occupied by the detached pier. A deep but narrow channel was then formed on the north side of this pier, which has continued ever since to discharge most of the water of the river. But the pier had sunk in a position so much deranged (and heretofore described to the Department in my letter of February 26 and May 16), that, as a part of the work, it must be considered, at most, useless; for the expense of adjusting a superstructure to its present derangement will, at least, equal any advantage that may be derived from it in its place.

The works came into my charge on the first day of February last, from which time until the official announcement of the appropriation by Congress for the present year, contained in your letter of July 3d, received July 23d, I had employed a few hands in addition to the master workmen retained from last year, in making preparations for prosecuting the work on the next appropriation.

These consisted in completing the pile-driver which had been begun and the scow framed last season, building an additional crane-scow, making barrows and other implements, and erecting shops and other buildings for the accommodation and facilities of workmen. I had also procured on contract a quantity of timber for the piers, and had contracted for a small quantity of stone, to be delivered as soon as the construction would be commenced.

The present plan of construction, changing materially the original plan, was also, in the meantime, matured and submitted and sanctioned by the Department.

The amount of money left available to me from the appropriation of last year, was not enough, after the expenses incurred as above, to commence the work, and accordingly no more was done until the present appropriation than to thus make all necessary arrangements for prosecuting operations on a scale adapted to the amount in prospect for the season.

The construction was accordingly commenced on the north pier and the first crib laid in the lake on the first day of August, seven days after the receipt of your letter of July 3d, advising that the appropriation was available. Every favorable day since, the work has advanced on this pier, and of which there is now laid in the lake, one foot above the surface of the water and secured with its complement of piles and partly filled with stone, six hundred and thirty-two feet, extending beyond the crest of the outer bar to within two or three inches of nine feet water; one crib (thirty feet) more on this line and which will be laid the first calm day, will complete the length of this pier in the lake for the present season.

It is expected that the remaining operations of the season will carry up and complete to its proposed height of seven feet above water, all the north pier now laid and carry out of the south pier a line of two hundred feet to a height of two feet above water; any other work which the season may permit will be applied to the wheeling of sand from the bar between the piers, and to the extension of the north pier back across the bar towards the river.

Owing to the lateness of the appropriation, much difficulty has obstructed the supply of an adequate quantity of stone. The contractor for one thousand cords, Mr. Hugunin, has experienced a much greater expense and embarrassment in the quarrying and in building and procuring the scows necessary to float it, than could have been anticipated, in consequence of the high price of labor and the scarcity of workmen.

He is, however, a highly respectable and responsible man, and is intent, although he may experience loss by it, on complying fully with the conditions of his contract.

No delay has occurred to the work for want of stone, as I had, previous to the time of Mr. Hugunin's contract, purchased and

contracted with another person for three hundred and fifty cords, which was all previously required.

That part of the north pier now laid promises entire permanency. The plan of construction, viz., the squaring of the piles and driving them on the interior of the crib, with the ties framed to embrace and shoulder on them, has succeeded beyond expectation, in giving strength to the work and facility to its construction, of which some idea may be formed from the fact that more than one hundred feet of pier, in from five to seven feet water, with the piles driven, stood through the hardest northeast gales of the present season, without a particle of stone in it, and not a log or pile, or bolt, pin, tenor or joint, was in any degree moved, injured or deranged from its position.

The strength thus given to the work, is so much the more gratifying, as perhaps no pier has been any where built on the lake in a more bleak exposed, or difficult situation than this one.

At the commencement of the building of the piers of this harbor, there existed, and there still exists many difficulties which do not seem to have been known in the first estimate for this work, and which cannot be realized by the department without a knowledge of this section of country.

From this point south and southeast, there is no timber suitable for the piers within thirty or forty miles. From the west it is from twelve to twenty miles to the timbers, upon the Des Plaines River, and to the north and northwest, excepting a small quantity of oak from eight to fifteen miles, and adjacent to the north branch of Chicago River, there is no timber available for the works.

The pinery on the Calamick River, from which the works have been supplied last season and this, and with a very indifferent material, is now nearly or quite exhausted of good timber, by the drain upon it from this place for building purposes, and whatever of pine timber that may be hereafter used on the public works will probably be shipped from the east side of Lake Michigan.

The public land adjacent to Chicago, which is at all grown over with timber is low, wet, and marshy, from which it is impossible to wheel large timber, excepting in the winter season, when the ground is frozen, and wherever good soil and timber occurs near the river, the land is claimed and owned by squatters and settlers who have recently acquired their rights under the the Pre-emption Act of the last session of Congress.

The remainder of the oak timber required for the work must be obtained from one of the three following places:—From the swamps to the northeast, and near the place from which it may be wheeled only in winter, either here or to some point on the river, from which it may be rafted here in the spring; from the shores of the north branch of the Chicago River, ten miles above Chicago, whence to raft it will require considerable expense to remove logs, &c., from the channel of the river, or from

the St. Joseph's or Calamazoo Rivers on the east side of Lake Michigan, whence it must be shipped in lake vessels. From whichever of these places it may be obtained it must be expensive, and hence the high price, fourteen cents per foot, assigned to this material in my estimate for 1835.

The supply of stone another year may also be expected to be attended with increased difficulty. The quarry laying as it does, almost on a level with the surface of the river, as they descend into it, the expense of keeping it dry by pumping, will greatly increase the expense of raising the stone.

The contractor for one thousand cords this year, will probably lose money on his contract, (at $5 46,) and the department may not expect it again so cheap, moreover, the quarry now used is on the canal land, of the State of Illinois, which will probably pass into private hands, soon after the next sitting of the State Legislature, and there is no other place from which the stone can be obtained with the same facility and cheapness.

The articles of subsistence and forage, may require some special notice. In the summer and fall of 1833, and the spring and summer of 1834, the emigration to this place exceeded all calculation, so far that the resources of the country within fifty miles of Chicago, has not supplied one fifth part of most of the articles of subsistence and forage required, and such has been, and is now, the demand for these articles, that it is a source of profit to wheel grain and provisions from the Wabash, a distance of from sixty to one hundred miles, or to ship the same from the lower lakes.

In justification, however, of great expenditures for this work, may be offset the importance of this harbor, to the commercial interest of the nation when it is recollected that this place at no distant day, is destined from its position and the projected canal, that is to connect its trade with the Mississippi, by the Illinois River, to form an important link in the great chain of trade, from the Atlantic and Lakes, on the Great West and Mississippi Valley. Although this point has now no internal ways for extending its commercial intercourse, other than bad roads, yet one hundred and eighty vessels of from thirty to one hundred and forty tons burden, have already arrived and departed during the present season of navigation. From these facts it is supposed that this work will be considered as entitled to as great an expenditure of public money as any other of the kind on the lakes.

The estimate for the whole work made and submitted agreeable to your instructions is the result of careful and diligent calculation and research, and is believed to be not far from correctness.

The estimate for dredging appended is made without any practical knowledge of operations, and may require some correction as to cost, though from inquiry it is not believed to be too great.

The whole amount estimated for expenses of next year, may be advantageously applied during the next season.

The amount that may be left from the present appropriation after the operations of the last quarter, may, perhaps, be well applied to the getting of timber during the coming winter, and on this subject the Department will hereafter receive a special communication.

I am, sir, with great respect,

Your obedient servant,

J. ALLEN, *Lt. U. S. A.*,
On Engineer Duty.

To Brig. Gen. C. GRATIOT, *Chief Engineer*,
Washington, D. C.

Report of Lieut. Allen, September 30, 1835, referred to on page 3 of Printed Report.

CHICAGO, ILLINOIS, September 30, 1835.

SIR—The operations for "Improving the Harbor of Chicago" have been prosecuted on a plan commensurate with the amount of funds available for the work during the present season, and have been successful to the full extent contemplated at the beginning of the season.

The north, or weather-pier, has been continued in crib-work four hundred and eighty feet beyond the construction of last season, and eighty feet more, terminating in a crib forty feet broad, will be added in a few days, extending this pier to a length in the lake of twelve hundred and sixty feet, and to a depth of twelve feet water.

The new portion is now nearly filled with stone, and is one foot above water. The old work, or that of last season, and which was left five feet above water, has been partly completed to its full height of seven feet. And it is expected that the whole length of twelve hundred and sixty feet will be built up to its intended height and finished this fall.

This will complete the north pier according to the original plan, excepting the pier head, which it has not been deemed prudent to construct this fall, as circumstances, which I will explain, may render a further extension of the pier necessary during another season. The pier of last year extended seven hundred feet from the lake shore past the crest of the outer bar, and to a depth of full nine feet water. It was observed this spring that a new bar had formed, commencing at a point on the lake shore, about half a mile from the pier on its weather side, and running oblique to the line of the pier till it passed it about one hundred and forty feet from the end of the work. This bar left but eight feet water out in the line of the work, where last year there was ten and

twelve feet. And should a similar formation be again caused by the work as at present terminated, it can only be overcome by again extending the pier across it. Soundings will be made, and pains taken to ascertain whatever conformation the bars may assume during the next winter, and the Department will be duly informed of the result. I may remark that immediately at the end of the pier of last year, and for sixty feet beyond the same, had entirely gone, leaving, where the first two cribs were sunk this season, a clean clay bottom at a depth of eighteen feet from the surface, and which was, last season, covered with nine feet of sand.

The north pier has fully answered expectation in strength and permanency, and it has already been useful to many vessels lately, as many as five schooners at the same time have sheltered behind it while discharging their cargoes.

The south pier has also been advanced five hundred feet, making it now seven hundred feet long in the lake, beside the portion of it constructed across the river and bar during the first season of operations. This pier now extends to seven feet water, its crib-work is laid one foot above the surface, the piles are all driven, and it is nearly filled with stone.

Whatever further work the season may permit me to do on this pier will be directed to levelling it up, and building on it above water.

The two piers thus enclose a channel two hundred feet in breadth of from three to seven feet water now ready for the operation of a dredging machine, which must be employed to deepen the channel, and which, it is hoped, will be in full operation by the middle of next season.

The current of the river has made no impression on the sand in the channel, the same depth of water between the piers having been remarked all summer.

Six thousand dollars of the appropriation for this year has been reserved for the purchase of an engine and dredge for the dredging machine, it being necessary to secure the construction and use of the machine next season, that the machinery of it, which must be procured at some place remote from this, should be contracted for and made during the coming winter, and probably before another appropriation will be made available.

Of the further means which I shall think it necessary to make to procure this machine, you will be timely advised.

The difficulties mentioned in my last report, as attending the conduct and administration of the operations of the public works at this place, have rather increased than diminished during the present season. The great and continued emigration to the town and country has kept all kinds of grain and provisions scarce and dear, and often difficult to procure at any price, and the very great demand for laborers and mechanics on the buildings and

improvements of the town, has maintained a very high rate of wages for the workmen.

The influx of this class of emigrants has been great too, but the apparent facilities afforded them for securing valuable portions of public land, by settlement on it, and which were confirmed to such settlers and claimants by their success at the recent land sales here, have encouraged mechanics and laborers on arriving, or soon after, to abandon their appropriate trades and occupations for a bright hope of soon making their fortunes under the pre-emption laws. Some of my best workmen, and who have been on the works since their commencement, have since the sales at this place refused to continue at a rate of wages from $1 50 to $2 00 per day, and have gone to Milwaukee and elsewhere to "make locations" on public land, in the confident expectation of securing a portion of it at the minimun price when it shall be brought into market. The constant changes of workmen thus made has been embarrassing and expensive to the work.

The season has not, thus far, been very favorable. During the whole of the present month the lake has been so much agitated by winds that no new work could be laid and but little stone could be delivered. The remainder of the fall, however, is expected to be favorable, as it usually is; and as I have before remarked, there remains but three cribs or eighty feet more to be laid to complete the length of the north pier to the extent intended this fall. It is confidently expected that the weather will be favorable enough for the operations in reserve for the fall.

The stone contractor has experienced the same difficulty as myself in procuring labor, and from the same causes, yet the exertions he is now making will certainly enable him to complete his contract and to exceed it as much as I may require of stone, in addition to the quantity contracted for.

The price of materials, particularly timber and sawed lumber has greatly increased since last year. The land in the neighborhood of Chicago, from which alone timber can be conveniently procured for the works in summer, has been purchased at the late sales by individuals who value the timber at a high rate; nor is it practicable to bring timber from the east side of the lake, except at exorbitant prices for its transportation in vessels.

The best method, therefore, of securing timber for another season will be, as was done last winter, to send a party of men to the woods of the public lands, twelve miles north of Chicago and near the north branch of the river, where they may get out the requisite supply and draw it to a point on the river whence it may be rafted and floated to the works in the spring. In favor of this method I will remark, that the quantity of timber which I caused to be procured in this way last winter could not have been purchased at this place at any time during the summer for twice the amount it did actually cost.

Sufficient funds will be reserved from the present appropriation to cover the expenses, during the first quarter of 1836, of a party of about thirty workmen, to be employed in the manner proposed.

It will be seen from the "statement of balances" accompanying, that $6985 will remain from the appropriation of this year applicable to the services of the next. This will be expended in the first quarter of 1836, for the objects before mentioned, viz.: purchase of machinery for a dredging machine and getting out timber in the woods.

This sum deducted from the aggregate estimate for the next year, will leave a balance of $61,365 maximum, or $59,365 minimum required to be appropriated for the service of 1836.

With this amount it will be practicable to complete both the piers from the lake shore to their full contemplated length in the lake, including the pier heads to construct the dredging machines with the necessary tightness, and to keep it in operation for the remainder of the season after it may be completed, and by means of it to open a channel practicable for vessels to enter the river, before the close of the season.

It is important to the interest of this place and the surrounding country, that the full amount of the estimate should be appropriated, in order that the improvement may be speedily effected, and the magnitude of these interests and their dependent connection with the trade and commerce of the lakes may be, in a manner, estimated from the fact that since the opening of navigation, in the spring, up to this date, two hundred and twelve vessels have arrived and discharged their cargoes, by far the greater number being laden with merchandise shipped at Buffalo and Detroit and destined for this market and the country northwest and south.

Very respectfully, sir,
I have the honor to be,
Your obedient servant,
J. ALLEN, *Lt. U. S. A.*,
On Engineer duty.

Brig. Gen. C. GRATIOT,
Chief Engineer.

(*Report of Lt. Allen, September 30th, 1836, referred to on page 3d of Printed Report.*)

CHICAGO, ILLINOIS, Sept. 30th, 1836.

To Brig. Gen. C. Graliot, Chief Engineer:

SIR—Owing to the lateness of the period at which the appropriation for "continuing the improvement of Chicago Harbor" was made and became available, very little has yet been done to advance the work more than to complete the dredging machine and to procure a quantity of timber and other materials now on

hand. The season had so far advanced that workmen and laborers who came into the country in the spring to seek employment, had obtained permanent employment elsewhere, and it required some time, with the offer of high wages, to engage men enough to proceed with the improvement.

The season, too, since the passing of the appropriation has been exceedingly windy and unfavorable, insomuch that I have not had a single day calm enough to permit the placing of a crib in extension of the north pier in the lake. This pier remains, therefore, as it was left last fall, with the exception of about three hundred cords of stone thrown into parts of it that had not been filled. As this pier extends now twelve hundred and sixty feet into the lake, I shall not attempt to carry it farther this fall, but shall confine my operations on it to the building and filling up of a portion of about seven hundred feet that was laid and left unfinished last season. It has now a sufficient depth of water at its outer end to allow the larger vessels to approach it and lay along the inner side for a distance of six or seven hundred feet from the end, and two hundred feet more which may be added to it during the next season, will probably carry it far enough out to secure a safe entrance for all vessels that navigate the lake and to protect the channel from being filled with the shifting sand of the bottom, which is stirred and driven by the waves in shallow waters and near the shore.

The south pier has been extended one hundred and fifty feet, laid one foot above water. About five hundred cords of stone have been thrown into this pier the present season; and if the weather will permit I propose carrying it out two hundred and eighty feet farther this fall, which will make it of equal length in the lake with the north pier. No part of this pier is raised more than one foot above the surface of the water, and as I can work on it in moderately rough weather, under the protection of the north or weather pier, I think I will be able to finish up the greater part of it this season. Both piers will then extend across the crest of the outer bar twelve hundred and sixty feet into the lake, and to full eleven feet water.

There is a sufficient quantity of oak timber and pine timber now on hand for the operations of the next quarter, and I expect to be able to work during two months of it.

I was not able to make a contract for stone on reasonable terms, and have hired men by the day or month to raise them in the quarry, and others to boat them down. In this way they are delivered in the piers as fast as needed, but owing to increased wages occasioned by a great demand for laborers on the canal, they will cost about twenty per cent. more than the contract price of last year. I have already delivered in the piers about eight hundred cords.

The dredging machine is just finished and gone into operation.

It works well, and will be received and paid for as soon as it shall be tested and proved, and found to answer fully the conditions of the contract. I expect by means of it during the next month to open a channel along one of the piers, at least sixty feet broad, and deep enough to admit into the river any vessel that navigates the lake. This channel will even this fall be of great use to the trade of this place, as vessels will come up from the lower lakes much later in the fall than usual, when they learn that they can enter this harbor to lay up for the winter.

The entire appropriation will be exhausted this fall and winter, in operations on the works, and the full amount of the estimate will be required, and may be usefully applied in the services of next year. The great and increasing trade and prosperity of this town, and the adjacent country, urges the importance of a speedy completion of the improvement of the harbor, which can only be effected by larger annual appropriations for this object than have heretofore been made on the estimates.

No accident, loss, or derangement, has happened to the piers since my last annual report.

I have the honor to be, with the greatest respect, Sir,
Your obedient servant,

J. ALLEN,
Lt. U. S. Army, on Engineer's Duty.

Bureau Topographical Engineers,
April 28, 1858.

I certify that the foregoing is a true copy of the original, on file in this bureau.

J. J. ABERT,
Colonel, Corps Top. Engineers.

April 28, 1858.

Be it known, that J. J. ABERT, who has signed the foregoing Certificate, is Colonel of the Corps of Topographical Engineers, in charge of the Topographical Bureau, and that to his attestations as such, full faith and credit are due, and ought to be given.

In testimony whereof, I have hereunto subscribed my name, and caused the Seal of the War Department to [SEAL] be affixed, on this fourth day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

JOHN B. FLOYD,
Secretary of War.

(*Report of Lieut. Allen, September 30th, 1837, referred to, on page 3d of Printed Report.*)

Chicago, Illinois, September 30th, 1837.

To Brig. Gen. C. GRATIOT, Chief Engineer.

General:—The operations on the works for "Continuing the Improvement of the Harbor of Chicago, in the State of Illinois," have been conducted on a scale commensurate with the funds available for this object during the present year. The season had advanced to 13th of June when I arrived at this place to resume the charge of the Improvement, and since that time I have confined the operations chiefly to the building up and finishing of the work heretofore laid, and left unfinished at the close of the last year and to the opening of a channel between the piers by means of the dredging machine.

The north pier has received about two hundred cords of stone in the last five hundred feet of it extending into the lake. All that will be required of this material to give entire security to this portion of it, which last year only wanted this filling up to put it in condition to be covered. It will be leveled and planked over this fall as shown in the drawing.

The south pier which was only laid in cribs to the surface of the water, at the close of the last year, has been levelled and built up throughout its entire length to nearly its required height above water, and more than eight hundred cords of stone have been thrown into it. The first eight hundred feet from the Fort wharf or commencement has been covered and finished, and the entire length, sixteen hundred and eighty feet, marked "Finished" on the drawing will be so filled up, covered, and completed before the close of operations for the present year.

The dredging machine has been kept in active operation and has opened a good channel eighty feet broad along the inner side of the south pier, the soundings of which are shown in the drawing. The least depth of water is ten feet, and vessels have entered in northerly weather drawing ten feet ten inches. The machine works remarkably well and would have accomplished much more, but for want of lighters enough to receive the sand as fast as raised. Five new hopper-decked scows or lighters have been built during the present year. All that I could conveniently build. The machine will require six or eight to keep her in full operation. The sand raised from the channel is dropped to the leeward of the south pier.

The only new work laid this season is two hundred feet on the outer end of the south pier, and about the same length on the extension of the north pier in shore.

The work projected and required to complete the improvement is shown on the drawing and marked "projected."

In consequence of the remarkable position which the outer bar

has assumed since my last report, a still further extension of the piers of two hundred feet beyond that contemplated last year is rendered necessary.

This will add four hundred feet on the outer end of the north pier and carry it to fourteen feet water, a depth which it is supposed cannot for many years be materially lessened by the encroachment of the bars from the weather side. It will be seen from the drawing, that a great deposit of sand has been made on the north or weather side of the north pier since the work was commenced. This deposit will go on throwing the bars still further out and threatening to obstruct the entrance, until the pier shall be carried into the deeper waters of the lake, beyond its sensible influence. The object of the extension now proposed is to avoid the effects of this deposit for a length of time, say ten or perhaps fifteen years. I have estimated its cost at fifty thousand dollars, as shown in statement No. 2 accompanying.

The amount estimated for the expense of the next year is necessary to continue the improvement on the plan submitted and approved in 1834, and it will be observed that this amount falls within the "Estimate of funds necessary to complete the work," so at that time approved.

The great and increasing annual expenditures for the security, repairs, and renewals of boats, scows, machinery, &c., used in the operation, makes it an economy of expense to hasten the work to a speedy completion. The present and growing interests of the commerce of the Lake depending on this harbor for safety of navigation, and the interest of the Government itself, as connected with the sale and settlement of the Public Lands in this vicinity, equally demands, that the improvement should not be delayed, and that as much money as can be economically and properly applied, should be appropriated each year for this object, and such an amount only is contemplated in the estimate.

No accident or derangement of any kind has happened to the work since my last annual Report.

The balance of the appropriation available for the fourth quarter of the present year will all be expended in that quarter.

I have the honor to be,

Very respectfully, sir,

Your obedient servant,

J. ALLEN,

Capt. U. S. Army, on Engineer Duty.

The following information relating to the Treasury Warrants and Drafts, which I have received during the present year, on account of the expenses of the works under my charge, is furnished in obedience to instructions from the Engineer Department, dated August 12th, 1837;

The first amount, $3,046.04, being the balance of the appro-

priation for 1836, was received in a Treasury Warrant, payable at the Farmers' and Mechanics' Bank of Michigan. This was paid to A. V. Knickerbocker, Clerk, for money which he had advanced on account of the work.

The amount of estimate for June, $7,600, was received in a Treasury Draft on the Receiver of Public Moneys at Danville, Illinois, was paid by him in specie, and the same funds were by me paid out to the public creditors.

The amount of estimate for July, $11,200, was sent in a Treasury Draft on the Bank of Michigan. That bank refusing to pay the same in specie, the draft was negotiated at par with the Chicago Branch of the State Bank of Illinois, this bank paying my checks for the same in her paper, and all sums under five dollars in specie.

The amount of estimate for August, $9,800, was sent in a Treasury Draft on the Receiver of Public Moneys at Iowa, in Michigan, was paid by him in specie and the same was disbursed.

The amount of estimate for September, $7,600, was sent in a Treasury Draft on the Receiver of Public Moneys at La Porte, in Indiana, was paid by him in specie and the same is on hand and will be disbursed.

J. ALLEN,
Capt. U. S. Army, on Engineer Duty.

September 30th, 1837.

Bureau of Topographical Engineers,
April 28th, 1858.

I certify that the within and foregoing is a copy of the original on file in this Bureau.

J. J. ABERT,
Col. Corps T. E.

28th April, 1858.

Be it known that J. J. Abert who has signed the foregoing certificate is Colonel of Topographical Engineers in charge of the Topographical Bureau, and that to his attestations as such full faith and credit are due and ought to be given.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the War Department to be affixed, on this fourth day of May, in the year of our one thousand eight hundred fifty-eight.

[SEAL.]

JOHN B. FLOYD,
Secretary of War.

(*Report of Capt. Allen, September 30th, 1838 referred to on page 3d of printed report.*)

Office of Public Works,
Chicago, Illinois., Sept. 30th, 1838.

To Col. J. J. Abert, Commanding Topographical Engineers,
Washington, D C.

SIR:—The operations for "continuing the improvement of the Harbor Chicago," under my charge, have, since the 30th September, of last year, proceeded on a scale adapted to the means appropriated for the purpose.

The balance available for the 4th quarter of 1837, was applied in that quarter to complete and cover the outer part of the north pier, to the filling up with stone, and covering of nearly all of the south pier then laid, and to the continued operations of the dredging machine in the channel between the piers. At the close of operations last fall, a good, deep entrance was secured to the river which had been preserved and increased by the work of the present season.

Under the appropriation of this year, the funds were not available until about the first of August, since which time ten thousand dollars (of the fifteen thousand appropriated,) has been expended as follows:

The dredging machine has worked whenever the weather would permit its lighters to go out and discharge in the lake. Three new lighters have been built, and the north pier has been produced four hundred and seventy feet in shore, through the beach of loose sand between the river and the lake, as represented in the accompanying sketch of the work. This portion is all laid seven feet below the surface on the inner side in a channel made for it by the dredging machine. It is raised from one to three feet above the surface, and nearly filled with stone (about 350 cords.) The laying and filling up from this depth secures the channel of the stream against a dangerous encroachment of the sand from this part which being very fine and almost quick, had a great freedom of motion in this direction.

The accompanying drawing will show the state and condition of the harbor at the present time, as also, that a very great deposite of sand has made on the weather side of the north pier since my report of last year. This continued accumulation, which threatens soon to obstruct the present entrance will require to be met by a corresponding extension of the north pier into the lake. According to the plan heretofore approved by the Engineer Department and the immediate necessity for this extension will doubtless be made, fully shown and strongly urged by my successor in office whose estimate for the next year will be sent with this report.

The harbor at present affords an easy entrance, and secures shelter in the worst weather, to the largest class of boats and ves-

sels engaged in the commerce of the lakes; and this being the only shelter for a distance of more than three hundred miles to the weather of it, the greatest solicitude is felt for its continued improvement and permanent security by all interested in the extensive navigation and trade of this lake.

I have the honor to be,

Very respectfully, sir,

Your obedient servant,

J. ALLEN,

Capt. 1st Regt. Dragoons on Engineer duty.

Bureau of Topographical Engineers, April 28th, 1858

I certify that the foregoing is a true copy of the original on file in this Bureau.

J. J. ABERT,

28th April, 1858. *Col. Corps T. E.*

Be it known, That J. J. Abert, who has signed the foregoing certificate, is Colonel of Topographical Engineers, in charge of the Topographical Bureau, and that to his attestations as such full faith and credit are due and ought to be given.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the War Department to be affixed on the fourth day of May, in the year of our Lord, one thousand eight hundred and fifty-eight.

[SEAL.]

JOHN B. FLOYD,

Secretary of War.

(*Report of Major Turnbull, June 5, 1844, referred to on page 3d, of Printed Report.*

WASHINGTON CITY, June 5th, 1844.

COL. J. J. ABERT,

Chief Topographical Engineers.

SIR:—In obedience to your orders, I have inspected the work for the improvement of the harbors of Chicago, Milwaukie, and St. Joseph's, on Lake Michigan, and have the honor to report.

My investigations and inquiries were directed principally to the following facts:

1. What was the original state of the bar at the entrance of the harbor?
2. The progress of the works for its improvement.
3. The progressive effects of these works.
4. The present condition and extent of the works.
5. The present state of the navigation.
6. The cause of the original bar.
7. The distance of the littoral current from the shore and from the existing works, and from those, also, which it is intended to

make, and the influence which such works may have in modifying the position of such current, its velocity at the bottom particularly, and its breadth and depth.

8. The action that the waves exert immediately on the beach, and upon the bottom of the lake, and at the entrance of the harbor. Their action upon the sides of the piers, and upon the beach, to windward. Whether there are lines of shoals ranging nearly parallel with each other, and extending from the beach into a certain depth of water, at a very small angle with the beach, and to what they owe their existence, their former position, &c., &c.

At Chicago, the original bar was about three hundred and fifty feet from, and parallel with, the shore of the lake, it was about fifteen hundred feet in length, and ninety feet in width, and formed of blue clay, overlaid by a stratum of sand, with seven feet of water on it.

The works projected for the improvement of this harbor, were two parallel piers, of crib work, filled with stone, two hundred feet apart, and extending into the lake, nearly at right angles to the shore, from the point where the river made a turn to the south before entering the lake.

In the year 1837, the piers were extended into eighteen feet depth of water, and the harbor was made available for the largest class of steamers. but a bar was discovered forming to the south of, and across, the entrance, parallel to, and of the same length, nearly, as the original bar.

The north pier was now extended, but deflected twenty-five and a half degrees to the north of the original direction, and a channel was dredged through the bar, just mentioned as having formed across the entrance, sufficient to admit the largest class of vessels. The change of direction given to the north pier, opened the harbor more to the influence of the east winds, which are the prevailing and highest winds here, and exposed the vessels, inside, to a very heavy ground swell, frequently to endanger them; this extension was carried out four hundred and five feet. The direction of this pier has been again changed by curving the head of it gradually, to bring it back into line with the first direction; and extended four hundred and seventy feet, and the effect of this change has been greater protection to the harbor, inside, but bars have continued to form across the entrance as the work progressed.

In the years 1840, '41, '42 and '43, a bar was forming, commencing at the south, about the same distance from the piers as the end of the original bar, but its direction slightly changed, and gradually progressed until it eventually joined the north pier, a short distance from its head; a channel was still left open around the tail of this bar, and between it and the end of the south pier, through which twelve feet of water could be carried into the

harbor; this channel, however, was intricate, and difficult of access to sail vessels, running for the harbor in stress of weather, and Captain McClellan, the officer in charge of the work, has this spring dredged a channel through this bar two hundred feet in width from the north pier, and a depth of eleven feet, quite sufficient for the largest class of vessels, and the navigation is, at present, perfectly good, and the harbor is accessible by two channels.

The condition of the work is very good, excepting only the deterioration of the timber exposed above water, the old part of the north pier requires removal.

The north pier is two thousand five hundred and eighty-five feet in length, four hundred and seventy feet of which was built in the last season. The south pier is one thousand seven hundred and seventy feet long.

It is very much to be regretted that a continued series of observations of the winds and currents have not been made in each year, during the progress of the work, by which their effects could be ascertained, but in some years the surveys, even, have been omitted, and no comparisons can be made for those years, and until Captain McClellan took charge of the work, no observations of any kind have been made; his experiments on the currents are very limited for many reasons, but he has ascertained that a littoral current exists in a direction nearly south, and at a rate of about one and three-fourth miles per hour. His observations were made at a point two hundred feet from the head of the north pier, and within one hundred and fifty feet of the point to which it was proposed to extend this pier. The depth and breadth of this current has never been ascertained.

The effect of the extension of the north pier has been to deflect this current slightly to the east, probably caused by the curve given to the pier; during that spring the fields of ice were observed to turn to the east by south.

The action of the waves on the beach to the north or windward, during the prevalence of north and northeasterly winds, is continually exerted to carry forward the light and drifting sand, and by wedging it against the pier, the beach has been extended thirteeen hundred feet beyond what it was originally, their action upon the bottom of the lake is to throw up the sand in knolls or ridges parallel with each other, and forming small angles with the beach previous to its being lifted ashore. The same influence is exerted at the entrance, opposed by the volume of water from the river, and aided by the light sand which drifts over the pier to form the bars which obstructed it. The drifting of the sand over the pier has been very much checked by the erection of a board fence a short distance from, and parallel with, the north pier. Captain McClellan has also made an effort to fix these drifting sands, by planting grass, but with very poor success, and if even this

could be made to succeed, it must be carried north for many miles in extent before any lasting benefit could result.

With all these causes, which must continue to exist, unless there be a limit to the drifting sands, the impression in my mind is irresistible, that the existing works, however necessary they may be for the present, are but temporary in their effect, and only seem to retard the operations of nature, and if suffered to remain as they are, the shore of the lake would eventually assume its original form. To preserve the entrance as it is, in my opinion, occasional dredging must be resorted to.

Connected with this subject, Captain McClellan proposes to erect what he calls an auxiliary pier, a project which may be worthy of consideration, as additional means of still further retarding the operations of nature.

He argues from a fact which he seems to consider well ascertained, that all the bars which have formed under the lee of the present north pier are, or have been, of a definite length, and caused by the travelling beach and sands from the north, and that by erecting a pier north of it, and at a distance greater than the length of the bars, a similar effect would be produced under its lee as under the lee of the present pier, and the entrance of the harbor preserved from obstruction, his reasoning seems plausible enough, and the pier might be erected of much smaller dimensions than the present piers, and, of course, proportionally cheaper, but his reasons are not sufficiently manifest to my mind to recommend it.

Your obedient servant,

W. TURNBULL,
Major Topographical Engineers.

Bureau Top'l Eng'rs, December 3d, 1857.

I certify that the foregoing is a true extract from the original on file in this office.

J. J. ABERT,
Col. Corps T. E.

Be it known that J. J. Abert, who has signed the foregoing certificate, is Colonel of the Corps of Topograpical Engineers, in charge of the Topographical Bureau, and that to his attestations, as such, full faith and credit are due, and ought to be given.

In testimony whereof I have hereunto subscribed my name and caused the seal of the War Department to be attached, [SEAL.] on this third day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

JOHN B. FLOYD,
Secretary of War.

(*Copy of field notes of the original government survey of the land in question, made in* 1821, *referred to on page* 118, *of the printed report*).

* * * * * * * *

East, on a true line between sections 10 and 15, from the corner of sections 9, 10, 15 and 16 T 39 N R 14 E.

13 c 45 l left field bears N and S.

15 c 36 l the dwelling of citizen Joe Masins.

17 c 30 l struck the bank of Lake Michigan, where set a post corner of fractional sections 10 and 15 in a mound. Land level, sandy soil.

June 15, 1821.

North, between sections 9 and 10 T 39 N R 14 E.

27 c 08 l struck the bank of Chicago River, where set a post in a mound for corner of fractional sections 9 and 10. This line through the garrison fields.

* * * * * * * *

East, on a true line between sections 3 and 10 T 39 N R 14 E.

22 c 02 l struck the bank of Lake Michigan, where set a post for corner of fractional sections 3 and 19, from which a pine 7 inches diameter bears S 42° W 52 links, and a pine 10 inches diameter, bears N 9° W 122 links. Land similar to last mile.

* * * * * * * *

Meanders on Lake Michigan of Town 39 North of the base line of Range 14 E, to the corner of fractional sections 10 and 15, thence along the East side of fractional section 10.

North 2 West 14 c 50 l.

N 4° W 8 c 29 l.

N 5½ W 11 c 83 l. To the mouth of Chicago river, thence across the mouth of Chicago river.

N 29° E 4 c 47 l.

N 10° E 14 c 05 l.

N 4° W 19 c 00 l.

N 14° W 10 c 43 l. To the corner of fraction sections 3 and 10.

* * * * * * * *

Here commenced the meanders of Chicago, on the south side of said river, at its mouth, thence up the said river in section 10.

N 30½° W 2 c 50 l.

N 65° W 1 c 75 l.

S 83½° W 2 c 61 l.

S 62° W 2 c 11 l.

S 44° W 2 c 05 l.

S 42½° W 5 c 36 l.

S 53° W 4 c 00 l.

S 61° W 1 c 50 l.

S 85° W 1 c 80 l. To the corner in fractional sections 9 and 10.

* * * * * * * *

Thence down the North side of said river in fractional section 10.

N 67° E 3 c 79 l.
N 39½°E 6 c 38 l.
N 57° E 3 c 93 l.
N 69° E 3 c 74 l.
S 88° E 2 c 98 l.
S 64° E 4 c 50 l. To the mouth of Chicago river in the North side.

Here ends the meanders of subdivision of fractional Town 39 N R 14 E.

June 20th, 1821. JOHN WALLS.

I, William Palm, a sworn clerk in the Office of the Surveyor of the public lands for the District of Illinois and Missouri, do certify that I have compared the notes contained in this volume with the original notes on file in said office, and that the said notes are correctly copied therefrom

WILLIAM PALM.

Surveyor's Office,
St. Louis, November 26th, 1841.

In virtue of the above certificate of William Palm, a sworn clerk in this office, I do approve of the notes contained in this volume.

JOS. C. BROWN,
Surveyor of Public Lands,
For the District of Illinois and Missouri.

(*For Map, see original page* 611.)

Surveyor's Office,
St. Louis, 16th March, 1831.

The above plat of fractional township No. 39, N R 14 East, is comformable to the notes as explained in the above marginal remarks of the survey of said township, contained in field books, numbered respectively 146, 147 and 781, on file at this office.

W. McKEE,
Surveyor of Public Lands.

Surveyor's Office,
St. Louis, 28 May, 1836.

The above plat statement and certificate, are correctly copied from No. 47, of volume 14, of Illinois plats in this office.

E. F. LANGHAM.

(*For Plat, see original page* 612.)

General Land Office,
May 25, 1857.

I, Thomas A. Hendricks, Commissioner of the General Land

Office, do hereby certify that the annexed copy of plat and field notes, is a true and literal exemplification from the files of this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

THOMAS A. HENDRICKS, [SEAL.]
Commissioner of the General Land Office.

(*Copy of field notes made by Edward B. Talcott, referred to on page 115 of the Printed Report.*)

Vol. 444, field notes of the survey of a sand-bar adjoining fractional sections 15 and 10 and 39, N. R. 14, E. 3d, P. M., Chicago, 24th Feb. 1836.

List of chain-men, axe-men and flag-men, employed in surveying the sand-bar, adjoining fractional sections 10 and 15 and 39, N. R. 14, E. of 3d, P. M.

Oath of Chain-men.

I, James Kinzie, and I, F. Dill, do solemnly swear in the presence of Almighty God, that I will faithfully and impartially execute and fulfil the duties of chain carriers; that I will level the chain and plumb the pins, so as to obtain the true horizontal distance; and, that I will make a true report of the length of all the lines, that I may assist in measuring to the best of my ability, so help me God.

JAMES KINZIE.
F. DILL.

Sworn to and subscribed before the undersigned this 24th day of Feb., A. D., 1836.

EDWARD B. TALCOTT, *D. S.*

Oath of Flag and Axe-man.

I, G. E. Walker, do solemnly swear in the presence of Almighty God, that I will faithfully and truly perform the duties of a flag-man and axe-man to the best of my abilities, so help me God.

G. E. WALKER.

Sworn to and subscribed before the undersigned this 24th day of Feb., A. D. 1836.

E. B. TALCOTT, *D. S.*

James Kinzie, hind chain-man.

F. Dill, fore chain-man.

G. E. Walker, flag and axe-man, each at a compensation of 12 per cent. per day.

Measuring chain compared with the standard, and found to be of the true length.

Took the var. of the needle by comparing it with the section

lines, and found the var. 7° 30′ E. I therefore adjust my compass to that var. In the numerous surveys made by me during the past season, in this and the adjoining townships, I find the var. in almost all cases to be 7° 30′ East. The mound being destroyed at the corner of fractional section 10 and 15, I therefore commenced at the corner of sections 9, 10, 15 and 16, thence North 1 chain, as an offset to avoid fence and building, thence

17 c 30 l east, thence

1 c south where sets a post for the original corner of fractional sections 10 and 15 which stands at the edge of the water in the old channel of the river, thence continuing the sectional line east.

1 c 60 l east side of old channel of Chicago river.

4 c 74 l shore of Lake Michigan at the ordinary stage of water set a post in mound for the corner of fractional sections 10 and 15, from which the southeast corner of a house owned by Geo. E. Walker, bears N 58° 30′ one hundred and twenty-one links distant, and the northeast corner of a house owned by James Kinzie bears S 52° 45′ W one hundred and thirty-one links distant, commencing at the original corner of fractional sections 10 and 15 (as established) the meanders of the lake shore according to the original field notes, thence

12 c N 2° W.

1 c E offset to avoid building.

2 c 50 l N 2° W.

1 c West, thence

8 c 29 l N 4° W, thence

8 c 86½ l N 5½° W.

1 c E offset to avoid Garrison Buildings, thence

5 c 86 l N 5½° W to front of South Pier.

The termination of the last course and distance according to original notes falling within the pickets of the Garrison, it was therefore not regarded, but the course continued to the dock on the offset line.

2 c S 75° E along said pier W side of Chicago river.

5 c 79 l angle in pier.

1 c 37 l S 46° 30′ E W side of old channel of river.

3 c 47 l S 80° 30′ E to a post in the south side of South Pier on which three notches are cut in the direction of the line running therefrom, thence along the shore of Lake Michigan

5 c 10 l S 12° 35′ W, thence

7 c 89 l S 5° 35′ W, thence

21 c 33 l S 5° 5′ W to the corner of fractional sections 10 and 15 as recently established.

Survey of sand bar adjoining fractional section 15 commenced at the original corner of fractional sections

10 and 15 and meander south according to original field notes.
9 c 74 l S 2½° E, thence
22 c 50 l S 7° E to edge of lake, thence
1 c 50 l east to shore of lake at the ordinary stage of water, thence
7 c N 25′ E, thence
3 c 75 l N 9° 15′ east, thence
6 c 99 l N 35′ W, thence
4 c 45 l N 6° 40′ W, thence
9 c 98 l N 10′ E to the corner of fractional sections 15 and 10 as recently established.

In reference to the map accompanying the foregoing field notes, I would observe that, in tracing the lines of the original survey, they are found to be at some distance from the lake and river, since the original survey was made great changes have been effected on the lake shore by the action of the water, and in the channel and direction of the Chicago river, by the construction of a harbor, previous to the construction of a pier the river was forced by a sand bar at its mouth, to open into the lake, south of the harbor nearly as far as the south line of fractional section ten, the above causes will satisfactorily account for the discrepancy between the map presented and the original.

I certify that the foregoing note on pages 86 to 91, inclusive, are the original field notes of the surveys of the sand-bar adjoining fractional sections 10 and 15, in Town 39, N. R. 14, E. of the 3d P. M., as executed by me in the month of February, 1836, under my contract with, and instructions from Elias T. Langham, Surveyor of the Lands of the United States in Illinois and Missouri, bearing date 9th February, 1836, and I do further certify that the marks, descriptions, causes and distances specified in said notes, are correct, and also that the said notes were all set down at the time when, and in the order which the work was performed on the ground, that the average height of the sand-bar is two and a half feet above the lake.

(Signed,) EDWARD B. TALCOTT, *D. S.*

Surveyor's Office,
St. Louis, 30th December, 1840.

The foregoing survey of a sand-bar is rejected by order of the Commissioner of the General Land office; the survey is to be paid for.

WM. MILBURN,
Surveyor of the Public Lands in Illinois and Missouri.

2065

General Land Office,
September 25th, 1857.

I, Thomas A. Hendricks, Commisssioner of the General Land Office, do hereby certify that the annexed is a true copy and literal exemplification from the transcript of the field notes of surveys on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington on the day and year above written.

[SEAL.]

THOMAS A. HENDRICKS,
Commissioner of the General Land Office.

(*The deed from Robert A. Kinzie to John H. Kinzie, referred to on page* 199, *printed report, is in the words following:*)

This Indenture, made and entered into this twenty-fifth day of February, in the year of Our Lord one thousand eight hundred and thirty-three, by and between Robert A. Kinzie of the town of Chicago, Cook County, Illinois, of the first part, and John H. Kinzie, of Fort Winnebago, Brown County, Territory of Michigan, of the second part, witnesseth that the said Robert A. Kinzie, party of the first part, for and in consideration of the love and affection he bears to the said John H. Kinzie, party of the second part aforesaid, and for the further consideration of the sum of twenty dollars, current money of the United States of America, by the said John H. Kinzie in hand paid to the said Robert A. Kinzie, the receipt whereof is hereby acknowledged, and from the payment thereof the said John H. Kinzie hereby discharged, hath this day granted, bargained and sold, aliened, released and confirmed, and by these presents doth grant, bargain and sell, alien, release and confirm unto the said John H. Kinzie, party of the second part aforesaid, all the right, title, claim and interest of him the said Robert A. Kinzie, party of the first part aforesaid, of, in, and to the following described lots or parcels of land situate, lying, and being in Cook County, Illinois, and in Kinzie's Addition to the town of Chicago, and known and designated on the plan of said addition to the said town of Chicago as follows, viz., lot number two in block number one, lots number two and four in block number two, lots number five and eight in block number four, lots number six, seven, eleven and twelve in block number five, lot number two in block number twelve, lots number one and two in block number thirteen, lots number one, five, eight, and twelve in block number fifteen, lots number three and ten in block number sixteen, lots number three and ten in block number seventeen, and *Water Lots* number two, twelve, fifteen, sixteen, twenty-one, twenty-five, thirty, thirty four, and thirty-five, and whole blocks number nineteen, twenty-three, twenty-four, thirty-eight, forty, forty-two, forty-three, forty-six, forty-eight, and fifty-one, and the

west half of block number eleven, all of which may be seen by reference to the plan of the said addition to the said town of Chicago now on file in Recorder's office of Cook Co., Illinois. The said lots and blocks being parts and parcels of the north fraction of section number ten, township thirty-nine, north range, fourteen east. To have and to hold the said lots and blocks of land, together with all and singular the rights, privileges and appurtenances, rents, issues and profits, remainder and remainders, reversion and reversions, to the said John H. Kinzie, his heirs and assigns forever, and to his and their only proper use, benefit, and behoof. And the said Robert A. Kinzie hereby covenants and agrees to and with the said John H. Kinzie, that before the ensealing and delivery of these presents, he was well seized of the premises hereby conveyed, of a good indefeasible estate in fee simple, and that the same was free from all incumbrances whatever; and he further covenants and agrees to and with the said John H. Kinzie, that he will warrant and forever defend the premises hereby conveyed, against the claim or claims of any person claiming by, through, or under him, or against the claim or claims of any other person or persons whomsoever. In testimony whereof, the said Robert A. Kinzie, party of the first part aforesaid, hath hereto set his hand, and affixed his seal this day and year first above written.

R. A. KINZIE, [SEAL.]

Signed, sealed, and delivered in presence of

DAVID HUNTER,
GHO. KIRCHEVAL,
JAMES KINZIE.

State of Illinois, } *ss.*
Cook County. }

This day personally appeared before me, the undersigned, a Justice of the Peace in and for the said county, Robert A. Kinzie, who is personally known to said Justice to be the real person who executed the foregoing deed of conveyance, and who then, before said Justice, acknowledged that he signed, sealed, and delivered said deed freely and voluntarily for the uses and purposes therein mentioned and contained.

Given under my hand and seal this 25th day of February, 1833.

ISAAC HARMON, *J. P.*, [SEAL.]

(Endorsed on back.)

Recorder's Office, Cook Co., Ills.

This is to certify that the within deed of conveyance from Robert A. Kinzie to John H. Kinzie, was left for record on the 26th of February, 1833, and recorded on the 27th of the same instant, in Book A, pages 97 and 99.

Given under my hand and private seal, no seal of office being provided at Chicago, this twenty-seventh day of February, 1833. [SEAL.]

RICHARD J. HAMILTON, *Recorder.*

(*Deed from John H. Kenzie and Wife to William Jones, referred to on page* 199, *Printed Report.*)

This Indenture, made the first day of September, in the year of our Lord one thousand eight hundred and thirty-four, between John H. Kinzie and Juliette A. Kinzie (wife of said John), of the Town of Chicago, County of Cook, and State of Illinois, of the first part; and William Jones, of Buffalo, County of Erie, and State of New York, of the second part—Witnesseth, That the said parties of the first part, for and in consideration of the sum of one hundred and twenty-five dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to his heirs and assigns forever, a lot of land, lying and situate in Kinzie's Addition to the town of Chicago, in the county of Cook, and State of Illinois, described as follows, viz.: being water lot numbered "35," and all my right and title east thereof, agreeably to the town plat recorded in the office of the Recorder of the said county of Cook, to which reference may be had if necessary.

Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of the said parties of the first part, either in law or equity, of, in and to the above-described premises, with the hereditaments and appurtenances. To have and to hold the said premises, as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns, forever.

And the said John H. Kinzie, for himself, his heirs, executors and administrators, doth covenant, grant, bargain and agree, to and with the said party of the second part, and his heirs and assigns, that at the time of the ensealing and delivering of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming, or to claim, the whole or any part thereof, he will forever warrant and defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the year and day first above written.

JNO. H. KINZIE, [SEAL.]
JULIETTE A. KINZIE, [SEAL.]

Sealed and delivered in presence of Wm. Sabine
to J. H. K.'s signature.
ARTHUR W. MAGILL.

State of Illinois, }
Cook County. }

This day personally came before me, the undersigned, a Justice of the Peace in and for said county, John H. Kinzie, and Juliette A. Kinzie, his wife, who are personally known to me to be the real persons who executed the within deed of conveyance, and who there, before me, acknowledged that they executed the same freely and voluntarily, for the uses and purposes therein contained; she, the said Juliette A. Kinzie, wife of the said John H. Kinzie, being by me first examined separate and apart from her said husband, acknowledged that she executed the same freely and with her own consent, without fear or compulsion on the part of her said husband.

Given under my hand and seal, this 23rd day of September, A. D. 1834.

ISAAC HARMON, [SEAL.]
Justice of the Peace.

State of Illinois, } *Set.*
Cook County. }

RECORDER'S OFFICE, Oct. 14, 1834.

This is to certify, that the within deed was left for record on the 1st, and recorded on the 14th day of October, A. D. 1834, in Book B, pages 134 and 135.

Given under my hand and seal, (no seal of office being provided,) at Chicago, the date above written.

RICHARD J. HAMILTON, [SEAL]
Recorder Cook County, Illinois.

And forasmuch as various exceptions were taken by the plaintiff to the rulings of the Court on the trial, as stated in the said printed report, the Court now requiring the plaintiff to declare what exceptions are insisted on in order that the Court may clearly understand what exceptions are waived, and what are not waived. It is understood no exceptions are allowed by the Judge, save those stated herein, and particularly referred to in this bill of exceptions, as follows:

In compliance with the directions of this Court, the plaintiff's counsel specify in their order the following exceptions to the rulings of the Court, taken by them, and allowed by the Court from time to time during the progress of the trial, viz.:

1st. Plaintiff's counsel then and there excepted to the ruling of the Court, excluding as evidence the quit claim deed from John H. Kinzie to Wm. S. Johnston, dated July 1st, 1857, for water lot, No. 34, as stated on pages 2 and 3 of the printed report.

2d. Also, to the ruling of the Court in excluding the testimony of Samuel S. Greeley, as stated on pages 133 and 134 of the printed report.

3d. Also, the ruling of the Court in excluding the testimony of Capt. J. D. Webster, as stated on page 191 of the printed report.

4th. Also, to the rulings of the Court in excluding the evidence tending to affect the credibility of one of defendants' witnesses, viz.: Benj. Jones, as stated on pages 360 and 362 of the printed report.

5th. Also, to the ruling of the Court in excluding the evidence of Theophilus Greenwood, offered by them as rebutting evidence to the evidence of possession of the alleged accretion by defendants, at the date of the deed to the plaintiff, as stated on page 424 of the printed report.

6th. Also, to the ruling of the Court in excluding, as rebutting evidence, the deed from John H. Kinzie to the plaintiff, dated July 1st, 1857, for water lot, No. 34, and accretions thereto, when offered as evidence of a substantial reformation of the deed of October 22d, 1835, as stated on page 450 of the printed report, as corrected.

7th. Also, to the refusal of the Court to give each and all of the several instructions asked by plaintiff's counsel, as specified and stated on pages 452 to 455 and page 462 of the printed report.

8th. Also, to the charge of the Court, as contained on pages 458, and as stated on page 462.

And in further compliance with the rule of the Supreme Court, and for the sake of greater caution, the plaintiff specially excepted at the trial to the following parts of the said charge to the jury, which said exceptions were then and there severally allowed by the Court, to wit:

"The controversy grows out of the increase of land, caused by the construction of the piers. This case has been several times tried heretofore, and has been before the Supreme Court of the United States, and some points have been decided by that Court, which must be adopted as the law of this case. It seems to be agreed by the counsel here, on both sides, that the Supreme Court have ruled that the deed of the plaintiff of October 22, 1835, covered all the ground there was at its date between the side lines of 34, and between North Water street and the water of the lake, by virtue of the description contained in it, and if there had been any accretions within those boundaries, prior to the date of the deed, they would pass to the plaintiff by the deed. I understand this is agreed to by the counsel.

This being so, the controversy depends upon the point whether lot 34 had a water line upon the lake north of the north pier, in other words, whether the dividing line between 34 and 35 struck the lake before it reached the pier, at the date of the deed to the plaintiff, October 22d, 1835. If at that time lot 34 had a water front north of the north pier, I understand the counsel for the defence admit that the plaintiff was entitled to the accretions which might form on that water front?

Mr. Lincoln.—That is so.

The Court.—"Then, gentlemen, the controversy turns upon what the fact was on the 22d of October, 1835, as to this water front. Had lot 34 a water front at that time north of the north pier? And nearly the whole testimony, which has been introduced, on both sides, has had a bearing on that point, for the purpose of enabling you to understand and know how the fact was."

To which opinion of the Court, the plaintiff then and there excepted.

"You have, in the first place, as I have stated, the testimony of witnesses as to their knowledge of where the lake shore was in 1833, and so on down to 1835. There is a good deal of conflict upon this point among the witnesses. It is for you to determine where the truth may be in relation to that. The only point of materiality as to this is, that having ascertained where the lake shore was in 1833, you can follow any changes, so far as the evidence established any down to 1835, the material fact, which is to decide this case, being, where was the lake shore at that time?

In addition to the positive testimony of witnesses, you have also in evidence, as connected with the testimony, a number of maps and plats. These maps and plats are not otherwise material than so far as they may be connected with the statements of the witnesses and illustrative of their testimony. These surveys, plats and maps which have been introduced, are not in themselves independent evidences, but are to be received by the jury in connection with the evidence. So far as the witnesses establish that they are correct, they are to be received by the jury, and in no other way. This is true, of all the plats and maps that are introduced. As to the "original map," you have the statement of Mr. Snow, in connection with that. It has been allowed to go to you, not for the purpose of determining the actual length of the lines by the dividers upon the map, but simply to explain and elucidate so far as it may do so, the statement of Mr. Snow, the Surveyor. His statement is, that these side lines were not all actually run, and that the lake shore there was not meandered.

So, in relation to nearly all the other plats and maps. There is one remark, which perhaps should be made in regard to the plats and maps of Lieutenant Allen, who had charge of the Government works here from 1834 to 1838, I believe. He was the officer under whose direction the piers were constructed during that time. His reports which he made to the Government from time to time were official acts, and are evidence to be received by us of what he did officially. It seems, that accompanying some reports that he made in 1837 and 1838, there are diagrams or plats intended to represent with greater or less accuracy the condition of the piers and the harbor at that time, and upon these plats there was a representation of accretions that had been made. The Court has allowed these plats or diagrams

accompanying the reports to go to you as explanatory of them. So far as they indicate anything within the scope of his duty as an officer, we receive them and regard them; so far as they indicate anything outside of the scope of his duty as an officer, we are not bound by the statements that are contained therein. I may refer particularly to the diagram of the accretions which it is stated they represent. As I understand these plats, they are made by Lieutenant Allen, and accompany his report simply for the purpose of enabling the Government at Washington to understand the progress and condition of the work. It does not appear, as I understand by the reports and representations, that there was any actual survey made of the accretions which had formed on the old lake shore north of the north pier, but they are merely put there to enable the Government to know that certain accretions had formed there. And, as it seems to the Court, it would not be just or right to either of these parties that their interests should be controlled by a diagram which accompanied the report of Lieutenant Allen, when there is nothing upon the face of the diagram which shows that there had been an actual survey made. So far as the diagrams show that there had been an actual survey made, they are entitled to some credit undoubtedly, but even that, I apprehend would not absolutely control the rights of these parties as to this property north of the north pier.

That, gentlemen, is about all that the Court deems it necessary to say in relation to the proof bearing upon this question, as to the amount of the accretions which were formed on the lake shore up to October 22d, 1835, and as to where the old lake shore was.

As I understand the opinion of the Supreme Court, if you shall find from the evidence that this lot 34 had a water front at that time north of the north pier, then the plaintiff may be entitled to the accretions which were formed on that water front in proportion to its extent, which you will also find. If at that time there was no water front north of the north pier on lot 34, according to the boundaries above mentioned, the question of accretion does not arise, and the plaintiff is not entitled to recover.

As to the manner in which the division shall be made, if you shall find that there was a water front at that time, I feel myself bound by the rule laid down in this case by the Supreme Court, whatever my own view may be in relation to the subject. I shall therefore, so far as that is concerned, instruct the jury that they shall take the old water front and the new water front, the pier as well as the rest, and make the division according to the principle there laid down. [And the Court thereupon instructed the jury if they should find a water front on lot 34 at the time indicated to make the division in accordance with the rule heretofore laid down by this Court in the former trial, except as limited and qualified by the decision of the Supreme Court, which rule and

limitation and qualification are to be found in this case as reported in Volume 18, Howard's Reports, page 150.]

To the instructions, as given by the Court to the jury, and to each part thereof, the plaintiff then and there excepted, and the plaintiff also excepted to the refusal of the Court to give the instructions requested by the plaintiff severally and collectively.

The said issue was then submitted to the jury, whereupon the jury retired, and, after an absence of several hours, returned with the following verdict: "We, the jury, find the defendants not guilty."

And because now of the said exceptions so offered and made to the said opinion, and to the several decisions of the said Circuit Judge on the admission and rejection of evidence, do appear upon the record of the said trial, therefore, on the prayer of the said plaintiff, by his counsel, the said Circuit Judge hath to this Bill of Exceptions put his seal, according to the statute in such case made and provided, this 4th day of April, A. D. 1860.

THOMAS DRUMMOND, [SEAL.]

(Endorsed.)

Filed April 4th, 1860.

WM. H. BRADLEY, *Clerk.*

And on Saturday, the ninth day of June, in the May adjourned Term of said Court, in the year A. D. 1860, the following further proceedings were had in said Court in said entitled cause and entered of record, to wit:

William S. Johnston
vs.
William Jones and Sylvester Marsh. } Ejectment.

The Court having fully considered, and being now fully advised upon the motion of the plaintiff for a new trial of this cause, overruled said motion.

It is therefore considered and adjudged by the Court that the defendants be dismissed and go hence without delay, and that they have and recover of the plaintiff their costs by them about their defence in this behalf expended, amounting to the sum of four hundred and thirty-eight dollars and fifteen cents, and that they have execution therefor.

And on the same day, to wit, the ninth day of June, in the year last aforesaid, came the said plaintiff, by his attorney, and sued out said Court a Writ of Error in said entitled cause, which said of Writ of Error is in the words and figures following, to wit:

United States of America, *ss.*

The President of the United States to the Honorable Judges of the Circuit Court of the United States for the Northern District of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, in a suit in Ejectment between William S. Johnston, a citizen of the State of Ohio, Plaintiff, and William Jones and Sylvester Marsh, citizens of the State of Illinois, Defendants, a manifest error hath happened to the great damage of the said Wm. S. Johnston, as by his complaint appears. He being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what, of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice
[SEAL.] of the said Supreme Court, the ninth day of June, in year of our Lord one thousand eight hundred and sixty.

WM. H. BRADLEY,
Clerk Circuit Court United States,
Northern District of Illinois.

(Endorsed.)
Filed June 9th, 1860.
WM. H. BRADLEY, *Clerk.*

And on the same day, to wit, the ninth day of June, in the year last aforesaid, came again the said plaintiff, by his attorney, and filed in the office of the Clerk of said Court his Bond in said entitled cause, which said Bond is in the words and figures, following to wit:

Know all men by these presents, that we, William S. Johnston of Cincinnati, Ohio, as principal, and Horatio G. Shumway and Samuel Johnston, of the City of Chicago, Illinois, as sureties, are held and firmly bound unto William Jones and Sylvester Marsh, of Chicago, Illinois, in the full and just sum of two thousand dollars ($2,000), to be paid to the said Jones and Marsh, their certain attorneys, executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this ninth day of June, in the year of our Lord one thousand eight hundred and sixty.

Whereas lately at a Circuit Court of the United States for the Northern District of Illinois, in a suit depending in said Court

between the said William S. Johnston, plaintiff, and the said William Jones and Sylvester Marsh, defendants, in ejectment, judgment was rendered against the said William S. Johnston, and the said William S. Johnston having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Circuit Court to reverse the judgment in the aforesaid suit, and a citation directed to the said William Jones and Sylvester Marsh, defendants, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such that if the said William S. Johnston shall prosecute his writ of error to effect and shall answer all damages and costs if he shall fail to make make good his plea, then the above obligation to be void, else to remain in full force and effect.

WM. S. JOHNSTON. [SEAL.]
H. G. SHUMWAY, [SEAL.]
SAML. JOHNSTON, [SEAL.]

Approved,

THOMAS DRUMMOND.

(Endorsed.)
Filed, June 9th, 1860.
WM. H. BRADLEY, *Clerk.*

And on the same day, to wit, the ninth day of June, in the year last aforesaid, came again the said plaintiff, by his attorney, and sued out of the Clerk's office of said Court his process of citation against the said defendants in said entitled cause, which said writ of citation, together with an affidavit of services thereof is in the words and figures following, to wit:

The United States of America, to William Jones and Sylvester Marsh, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December, next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Northern District of Illinois, wherein William S. Johnston, a citizen of Ohio, is plaintiff, and you, William Jones and Sylvester Marsh, citizens of Illinois, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, of the Circuit Court of the United States for the Northern District of Illinois, this 9th day of June, A. D. 1860.

THOMAS DRUMMOND, *Circuit Judge.*

Northern District of Illinois, *ss.*

On this 11th day of June, in the year of our Lord one thousand eight hundred and sixty, personally appeared before me Samuel Johnston, the subscriber, and makes oath that he delivered a true copy of the within citation to William Jones and Sylvester Marsh.

SAML. JOHNSTON.

Subscribed and sworn to before me, this
11th day of June, A. D. 1860.

FRED. W. COLE, *U. S. Com'r.*

(Endorsed)
Filed, June 11th, 1860.

WM. H. BRADLEY, *Clerk.*

Northern District of Illinois, *ss.*

I, William H. Bradley, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the foregoing transcript and printed matter to be a true, full and perfect copy from the record of all the proceedings which have been had in said Court in said cause, wherein William S. Johnston is plaintiff, and William Jones and Sylvester Marsh are defendants, as the same remain of record in said Court and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office, in Chicago, in [SEAL.] said District, this twentieth day of July, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fifth year.

WILLIAM H. BRADLEY, *Clerk.*

William S. Johnston, plaintiff in error,
vs.
William Jones and Sylvester Marsh, defendants in error.

In the Supreme Court of the United States.
No. , of December Term, 1860.

Assignment of Errors.

And now, to wit:

The plaintiff in error, by his counsel, John A. Wills, in the record and proceedings in the above named cause, assigns the following causes of error, viz.:

1st. The Court below erred in excluding the evidence as specified and set forth in the first exception.

2d. The Court erred in excluding the testimony of Samuel S. Greeley, as specified and set forth in the second exception.

3d. The Court erred in excluding the testimony of Capt. J. D. Webster, as specified and set forth in the third exception.

4th. The Court erred in excluding the testimony tending to affect the credibility of Benjamin Jones, as specified and set forth in the fourth exception.

5th. The Court erred in excluding the evidence of Theophilus Greenwood, as specified and set forth in the fifth exception.

6th. The Court erred in excluding as evidence the deed from John H. Kinzie to the plaintiff, as specified and set forth in the sixth exception.

7th. The Court erred in refusing to give each and all of the further several instructions asked by plaintiff's counsel, as specified and set forth in the seventh exception.

8th. The Court erred in charging the jury, as specified and set forth in the eighth, (viz.: ninth and tenth exceptions,) of the bill of exceptions.

9th. The Court erred in entering judgment for the defendants against the plaintiff.

10th. General errors.

JOHN A. WILLS,
Of Counsel for Plaintiff in Error.

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